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Washington D.C. 20505

OCA 87-6058

* *URGENT*

Mr. James M. Frey
Assistant Director for Legislative
Reference
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Frey:

In accordance with the Office of Management and Budget Circular No. A-19 (revised), I am submitting proposed legislation for your advice as to whether it is in accordance with the President's program. Enclosed are ten copies of the proposed "Intelligence Authorization Act Fiscal Year 1989", along with draft transmittal letters.

You will note the bill includes a number of new provisions and that those which caused coordination problems in previous bills have not been included.

In order to insure favorable action on these proposals, we would like to transmit them to the Congress as early as possible. Accordingly, we ask for receipt of your advice by 11 January 1988.

Your cooperation is most appreciated.

Sincerely,



David D. Gries
Director of Congressional Affairs

STAT

Enclosure(s)



A-104-R

9 December 1987

A BILL

To authorize appropriations for fiscal year 1989 for intelligence and intelligence-related activities of the United States Government, the Intelligence Community Staff, and the Central Intelligence Agency Retirement and Disability System, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that this Act may be cited as the "Intelligence Authorization Act for Fiscal Year 1989".

TITLE I - INTELLIGENCE ACTIVITIES

Authorization of Appropriations

SEC. 101. Funds are hereby authorized to be appropriated for fiscal year 1989 for the conduct of the intelligence and intelligence-related activities of the following elements of the United States Government:

- (1) The Central Intelligence Agency.
- (2) The Department of Defense.
- (3) The Defense Intelligence Agency.
- (4) The National Security Agency.
- (5) The Department of the Army, the Department of the Navy, and the Department of the Air Force.
- (6) The Department of State.
- (7) The Department of the Treasury.
- (8) The Department of Energy.
- (9) The Federal Bureau of Investigation.
- (10) The Drug Enforcement Administration.

Classified Schedule of Authorizations

SEC. 102. The amounts authorized to be appropriated under section 101, and the authorized personnel ceilings as of September 30, 1988, for the conduct of the intelligence and intelligence-related activities of the elements listed in such section, are those specified in the classified Schedule of Authorizations prepared by the Committee of Conference to accompany () of the One Hundredth Congress. That Schedule of Authorizations shall be made available to the Committee on Appropriations of the Senate and House of Representatives and to the President. The President shall provide for suitable distribution of the Schedule, or of appropriate portions of the Schedule, within the Executive Branch.

Personnel Ceiling Adjustments

SEC. 103. The Director of Central Intelligence may authorize employment of civilian personnel in excess of the numbers authorized for fiscal year 1989 under sections 102 and 202 of this Act when he determines that such action is necessary to the performance of important intelligence functions, except that such number may not, for any element of the Intelligence Community, exceed 2 per centum of the number of civilian personnel authorized under such sections for such element. The Director of Central Intelligence shall promptly notify the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate whenever he exercises the authority granted by this section.

TITLE II - INTELLIGENCE COMMUNITY STAFF

Authorization of Appropriations

SEC. 201. There is authorized to be appropriated for the Intelligence Community Staff for fiscal year 1989 the sum of \$, ,000.00.

Authorization of Personnel End Strength

SEC. 202.(a) The Intelligence Community Staff is authorized and full-time personnel as of September 30, 1988. Such personnel of the Intelligence Community Staff may be permanent employees of the Intelligence Community Staff or personnel detailed from other elements of the United States Government.

(b) During fiscal year 1989, personnel of the Intelligence Community Staff shall be selected so as to provide appropriate representation from elements of the United States Government engaged in intelligence and intelligence-related activities.

(c) During fiscal year 1989, any officer or employee of the United States or a member of the Armed Forces who is detailed to the Intelligence Community Staff from another element of the United States Government shall be detailed on a reimbursable basis, except that any such officer, employee or member may be detailed on a nonreimbursable basis for a period of less than one year for the performance of temporary functions as required by the Director of Central Intelligence.

Intelligence Community Staff Administered
in Same Manner as Central Intelligence Agency

SEC. 203. During fiscal year 1989, activities and personnel of the Intelligence Community Staff shall be subject to the provisions of the National Security Act of 1947 (50 U.S.C. 401 et seq.) and the Central Intelligence Agency Act of 1949 (50 U.S.C. 403a et seq.) in the same manner as activities and personnel of the Central Intelligence Agency.

TITLE III - CENTRAL INTELLIGENCE AGENCY
RETIREMENT AND DISABILITY SYSTEM

Authorization of Appropriations

SEC. 301. There is authorized to be appropriated for the Central Intelligence Agency Retirement and Disability Fund for fiscal year 1989 the sum of \$144,500,000.00.

TITLE IV
CENTRAL INTELLIGENCE AGENCY
ADMINISTRATIVE PROVISIONS

One-Time Regrant of FY-1981 Personnel Authority

SEC. 401. (a) Whenever the Director of Central Intelligence finds during fiscal year 1989 that an employee or former employee of the Central Intelligence Agency has unfairly had his career with the Agency adversely affected as a result of allegations concerning the loyalty to the United States of such employee or former employee, the Director may grant such employee or former employee such monetary or other relief (including reinstatement and promotion) as the Director considers appropriate in the interest of fairness.

(b) Any action of the Director under this section is not reviewable in any other forum or in any court.

(c) The authority of the Director to make payments under subsection (a) is effective only to the extent that appropriated funds are available for that purpose.

FERS-CIARDS Second Chance Election Authority

SEC. 402. (a) Subsection (d) of section 301 of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees, as amended, is redesignated as subsection (e); and

(b) A new subsection, subsection (d), is added after the current subsection (c) to read as follows:

"(d) Notwithstanding the provisions of section 301(c) of the Federal Employees' Retirement System Act of 1986 and any prior elections made pursuant to that section, an employee who has been designated as a participant in the Central Intelligence Agency Retirement System, pursuant to section 203 of this Act, may elect to become subject to Chapter 84 of title 5, United States Code. An election under this paragraph:

(1) shall not be effective unless it is made during the sixth month period beginning on the date on which the employee is so designated;

(2) shall take effect beginning with the first pay period beginning after the date of election; and

(3) shall be irrevocable."

TITLE V - SUPPORT FOR DEFENSE INTELLIGENCE
COLLECTION ACTIVITIES

SEC. 501. (a) Subtitle A of Title 10, United States Code, is amended by adding the following new chapter after Chapter 18:

"CHAPTER 19 - SUPPORT FOR INTELLIGENCE

SEC.

391. Purpose of this chapter.

392. Definition.

393. Authority to conduct commercial cover.

394. Authority to acquire logistic support, supplies, and services.

395. Oversight.

396. General Provisions.

"SEC. 391. Purpose of this chapter.

The purpose of this chapter is to provide statutory authority for the Secretary of Defense or the Secretaries of the Military Departments to conduct support activities necessary for authorized and appropriately coordinated intelligence collection activities of the Department of Defense.

"SEC. 392. Definition.

a. "Intelligence collection activities" means the collection of foreign intelligence or counterintelligence information by intelligence components of the Department of Defense.

b. "Intelligence support activities" means those activities described in sections 393 and 394, below.

c. "Commercial cover" means a business entity that is established solely to conceal the role of an intelligence component of the Department of Defense as it performs intelligence collection activities.

"SEC. 393. Authority to conduct commercial cover.

a. "The Secretary of Defense or the Secretaries of the Military Departments, after consultation with the Director of Central Intelligence and the Director of the Federal Bureau of Investigation, as appropriate, may establish and conduct commercial entities such as corporations, partnerships, sole proprietaries, and other business entities as commercial covers to support intelligence collection activities of the Department of Defense, as defined herein. Such commercial entities may be established only upon written certification by the Secretary concerned that commercial cover is necessary to the conduct of authorized intelligence collection activities.

b. "The establishment and operation of commercial entities pursuant to this section shall be in accordance with prevailing commercial practices so long as such practices are not inconsistent with the purposes of commercial cover. To this end, laws applicable to federal appropriations, federal property management, federal acquisitions, federal employment and government corporations shall not apply to the establishment and operation of commercial covers upon the written certification by the Secretary concerned or his designee for the purpose that the application of such laws would risk the compromise of commercial cover.

c. "The Secretary of Defense or the Secretaries of the Military Departments, or their designees, are authorized to deposit and withdraw funds appropriated for the Department of Defense used to conduct commercial cover and funds generated by the business entities authorized by this section in banks or other financial institutions.

d. "Funds generated by such business entities may be used to offset necessary and reasonable expenses incurred by the commercial cover. As soon as practicable, funds generated by a commercial cover that are no longer necessary for the conduct of that commercial cover shall be deposited in the Treasury of the United States as miscellaneous receipts.

e. "Upon the liquidation, dissolution, sale, or other final disposition of a commercial cover established and conducted under the provisions of this section, the funds, after obligations are met, shall be deposited in the Treasury of the United States as miscellaneous receipts.

"SEC. 394. Authority to acquire logistic support, supplies, and services.

a. "The Secretary of Defense or the Secretaries of the Military Departments, or their designees, may acquire any goods, services, property, buildings, facilities, space, insurance, licenses and any equipment necessary in order to establish or maintain a commercial cover.

b. "Acquisitions made under the provisions of this section are to be made utilizing procedures consistent with prevailing commercial practice so long as such practices are not inconsistent with the purposes of the commercial cover. To this end, laws applicable to federal acquisitions, federal appropriations, federal property management, and federal employment shall not apply where the application of such laws would risk compromise of the commercial cover.

"SEC. 395. General Provisions.

a. "The Secretary of Defense shall promulgate regulations to ensure oversight, operational effectiveness, and accountability of the intelligence support activities conducted pursuant to sections 393 and 394 of this title.

b. "The Secretary of Defense or Secretaries of the Military Departments shall ensure that elements of the Department of Defense that undertake intelligence support activities pursuant to this chapter conduct an annual review and audit of such support activities.

c. "Intelligence support activities authorized under this chapter shall be protected pursuant to 50 U.S.C. 403(d)(3).

(b) The table of chapters at the beginning of subtitle A of such title and at the beginning of Part I of such subtitle are each amended by inserting after the item relating to chapter 18 the following new item:

"19. Support for Intelligence.....391".

TITLE VI - NATIONAL SECURITY AGENCY
PERSONNEL AUTHORITIES IMPROVEMENTS

NSA/DIA Employee Tax Equalization

SEC. 601. Section 912 (1) of chapter 1 of title 26, United States Code, is amended by striking the "or" in paragraph (C) and inserting at the end thereof the following new paragraphs:

"(E) subsection (b) of section 9 of the National Security Agency Act of 1959, as amended (50 U.S.C. §402 note), whenever the allowance would be excluded from gross income under paragraphs (1)(A) or (1)(B) of this section, or

"(F) subsection 1605 (a) of title 10, United States Code, whenever the allowance would be excluded from gross income under paragraph 1(A) of this section."

TITLE VII - DEFENSE INTELLIGENCE AGENCY
PERSONNEL AUTHORITIES IMPROVEMENTS

DIA Foreign Language Proficiency Pay

SEC. 701. Chapter 33 of title 10, United States Code, is amended by adding at the end thereof the following new section:

"1606. Special Pay for Foreign Language Proficiency

"(a) In addition to any compensation authorized under section 1604(b) of this title, the Secretary of Defense may further compensate civilian officers and employees of the Defense Intelligence Agency: (1) who have been certified to be proficient in a foreign language identified by the Secretary of Defense as being a language where personnel proficiency is necessary for national defense considerations; and (2) who serve in positions where proficiency facilitates performance of officially assigned duties, or otherwise are proficient in a foreign language for which the Defense Intelligence Agency has a critical need."

"(b) The annual rate for special pay under subsection (a) shall be determined by the Secretary of Defense but may not exceed \$3,600."

DIA Overseas Personnel Benefits Comparability

SEC. 702. (a) Section 1605 of title 10, United States Code, is amended by deleting from the first sentence of paragraph (a) thereof everything appearing after the phrase "employees of the Foreign Service".

(b) Section 432 of title 37, United States Code, is amended by deleting from the first sentence of paragraph (a) thereof everything which appears after the words "employees of the Foreign Service".

TITLE VIII
EXPORT ADMINISTRATION ACT:
NATIONAL INTELLIGENCE REVIEW

EAA National Intelligence Review

SEC. 801. Section 5 of the Export Administration Act of 1979 (50 U.S.C. App. 2404) is amended by adding at the end thereof the following new subsection:

"(r) National Intelligence Review---The Secretary, in consultation with the Director of intelligence agencies with export control responsibilities, shall identify annually those Control List goods and technologies which, if exported, would prove detrimental to the national intelligence effort of the United States, and shall submit requests for exports of such goods and technologies directly to the agencies for review. Intelligence agency Directors shall review submissions made to them pursuant to this paragraph, and shall advise the Secretary directly of their recommendation using the same procedures and dispute resolution mechanism as those established for the Secretary of Defense in Section 10(g)(2) (50 U.S.C. App. §2409 (g)(2))."

TITLE IX
FBI ENHANCED COUNTERINTELLIGENCE AUTHORITIES

Access to Consumer Reports

SEC. 901 (a) Section 1681b of title 15, United States Code, entitled "Permissible Purposes of Consumer Reports", is amended by adding the following new paragraph at the end thereof:

"(4) To the Federal Bureau of Investigation when presented with a request for a consumer report made pursuant to this subsection by the Federal Bureau of Investigation providing that the Director of the Federal Bureau of Investigation, or his designee, certifies in writing to the consumer reporting agency that such records are sought for foreign counterintelligence purposes and that there are specific and articulable facts giving reason to believe the person to whom the requested consumer report relates is an agent of a foreign power as defined in Section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. §1801). No consumer reporting agency, or officer, employee, or agent of such institution shall disclose to any person that the Federal Bureau of Investigation has sought or obtained access to a consumer report under this paragraph."

(b) Section 1681f of Title 15, United States Code, entitled "Disclosures to Government Agencies," is amended by inserting "(1)" before the existing paragraph and adding the following new paragraphs:

"(2) Notwithstanding the provision of Section 1681b of this Title, a consumer reporting agency shall furnish identifying information respecting any consumer, limited to his/her name, address, former address, place of employment, or former place of employment, to a representative of the Federal Bureau of Investigation when presented with a written request signed by the Director of the Federal Bureau of Investigation, or his designee, stating that the information is sought in connection with an authorized foreign counterintelligence investigation.

(3) No consumer reporting agency, or officer, employee, or agent of such institution, shall disclose to any person that the Federal Bureau of Investigation has sought or obtained a consumer report under this section."

Access to Social Security Information

SEC. 902. Section 1306 of Title 42, United States Code, entitled "Disclosure of Information in Possession of Department of Health and Human Services or Department of Labor," is amended by adding the following new paragraph:

"(f) FBI REQUESTS FOR FOREIGN COUNTERINTELLIGENCE PURPOSES.

Notwithstanding Section 1306(a), the Secretary of Health and Human Services, or the Secretary of Labor, as the case may be, shall disclose information in the Secretary's possession relating to the current and prior residences of a named person, when presented with a certification signed by the Director of the Federal Bureau of Investigation, or the Director's designee, stating that:

(1) The information is sought in connection with an authorized foreign counterintelligence investigation; and,

(2) There are specific and articulable facts giving reason to believe the person is an agent of a foreign power as defined in Section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. §1801)."

TITLE X
GENERAL PROVISIONS

Increase in Employee Compensation
and Benefits Authorized by Law

SEC. 1001. Appropriations authorized by this Act for salary, pay, retirement, and other benefits for Federal employees may be increased by such additional or supplemental amounts as may be necessary for increases in such compensation or benefits authorized by law.

INTELLIGENCE AUTHORIZATION ACT
FISCAL YEARS 1989

SECTION-BY-SECTION ANALYSIS
AND EXPLANATION

TITLE I
INTELLIGENCE ACTIVITIES

Section 101 lists the departments, agencies, and other elements of the United States Government for whose intelligence and intelligence-related activities the Act authorizes appropriations for Fiscal Year 1989.

Section 102 makes clear that details of the amounts authorized to be appropriated for intelligence and intelligence-related activities and personnel ceilings covered under this title for Fiscal Year 1989 are contained in a classified Schedule of Authorizations. The Schedule of Authorizations is incorporated into the Act by this section.

Section 103 authorizes the Director of Central Intelligence in Fiscal Year 1989 to expand the personnel ceilings applicable to the components of the Intelligence Community under Sections 102 and 202 by an amount not to exceed two percent of the total of the ceilings applicable under these sections. The Director may exercise this authority only when necessary to the performance of important intelligence functions or to the maintenance of a stable personnel force, and any exercise of this authority must be reported to the two intelligence committees of the Congress.

TITLE II
INTELLIGENCE COMMUNITY STAFF

Section 201 authorizes appropriations in the amount of \$, for the staffing and administration of the Intelligence Community Staff for Fiscal Year 1989.

Section 202 provides details concerning the number and composition of Intelligence Community Staff personnel.

Subsection (a) authorizes full-time personnel for the Intelligence Community Staff for Fiscal Year 1989, and provides that personnel of the Intelligence Community Staff may be permanent employees of the Staff or detailed from various elements of the United States Government.

Subsection (b) requires that detailed employees be selected so as to provide appropriate representation from the various departments and agencies engaged in intelligence and intelligence-related activities.

Subsection (c) requires that personnel be detailed on a reimbursable basis except for temporary situations.

Section 203 provides that the Director of Central Intelligence shall utilize existing statutory authority to manage the activities and to pay the personnel of the Intelligence Community Staff. This language reaffirms the statutory authority of the Director of Central Intelligence and clarifies the legal status of the Intelligence Community Staff. In the case of detailed personnel, it is understood that the authority of the Director of Central Intelligence to discharge personnel extends only to discharge from service at the Intelligence Community Staff and not from federal employment or military service.

TITLE III
CENTRAL INTELLIGENCE AGENCY
RETIREMENT AND DISABILITY SYSTEM

Section 301 authorizes Fiscal Year 1989 appropriations in the amount of \$144,500,000.00 for the Central Intelligence Agency Retirement and Disability Fund for Fiscal Year 1989.

TITLE IV - ADMINISTRATIVE PROVISIONS

Section 401 is a one-year reauthorization of authority previously granted, also on a one-year basis, to the Director of Central Intelligence by Section 405 of the Intelligence Authorization Act for Fiscal Year 1981 (Public Law 96-450, October 14, 1980). That section granted the Director the authority review the cases of individuals whose Agency careers had been adversely affected as a result of allegations concerning their loyalty to the United States and determine whether or not monetary or other relief ought to be provided them. Decisions made under that authority were not reviewable in any court and the awards were available subject to the availability of appropriated funds.

At the time, the Director reviewed and took action on a number of cases and the authority lapsed at the end of Fiscal Year 1981.

Since then, new evidence in one of the cases reviewed under that authority and decided against the individual has come to the attention of the Agency. Section 405 seeks to regrant that same authority to the Director so that he may reopen the case, consider the new evidence and reach an appropriate determination.

Section 401 would do this by reenacting verbatim the language of Section 405 of the FY-1981 Act, substituting the phrase "during fiscal year 1989" for the phrase "during Fiscal Year 1981".

Section 402 would amend the Central Intelligence Agency Retirement and Disability Act (CIARDS) to permit newly designated CIARDS participants to elect to join the Federal Employees Retirement System (FERS), notwithstanding any prior election that they may have made, and notwithstanding the provisions of Section 301 of the FERS Act that such prior elections are irrevocable.

This is necessary to correct an inequity that is unique to newly-designated participants in the CIARDS system. Under existing law, employees under the Civil Service Retirement and Disability System (CSRDS) are given a one-time opportunity to make an irrevocable election to participate in the new FERS. However, this election must be made within the period from 1 July 1987 through 31 December 1987. This requires employees who are not now designated as CIARDS participants, but who may be so designated in the future to make an election to join FERS without knowing whether their election will eventually result in participation in CSRDS, CIARDS, FERS or the special FERS category for "section 203 criteria employees". This situation makes it impossible for an employee to make an informed decision.

If the employee opts for FERS before qualifying for CIARDS, he/she runs the risk of having to remain in a retirement system that would provide a smaller retirement benefit than CSRS, CIARDS or FERS Special. On the other hand, if the employee does not choose FERS he runs the risk of choosing a retirement system, CIARDS, for which he may ultimately not be eligible.

To remedy this inequity, Section 402 would make a second election period available to newly-designated participants in CIARDS. This election period would be for six months, starting with the day of designation by the Director of Central Intelligence. In many respects, this proposal mirrors existing provisions in the FERS Act for reemployed individuals: Section 301 of the FERS Act permits reemployed individuals who are under CSRS to elect to transfer to FERS during the six-month period beginning on the date that employment commences.

The effective date of an election under Section 402 would be the first pay period after the date of the election, similar to the provisions of FERS. This election would, of course, be irrevocable.

TITLE V SUPPORT FOR DEFENSE INTELLIGENCE COLLECTION ACTIVITIES

Section 501 adds a new Chapter 19 to Subtitle A of Title 10, U.S.C., authorizing the establishment and conduct of corporations or other business entities to provide support for Department of Defense undercover intelligence collection activities.

Proposed Subsection 391 states that the purpose of proposed Chapter 19 is to provide the Secretary of Defense and the Secretaries of the Military Departments the statutory authority to establish commercial covers to support intelligence collection activities.

Proposed Subsection 392a defines a new term, "intelligence collection activities". The use of a new term rather than the redefining of the term "intelligence activities" precludes the development of two definitions (E.O. 12333 & statutory) for the same term.

Proposed Subsection 392b defines the term "intelligence support activities" to mean the establishment, acquisition and conduct of commercial cover systems and the acquisition of logistical support thereto as described in Subsections 393 and 394.

Proposed Subsection 392c defines a new term, "commercial cover", which is used throughout the proposed Chapter 19 of this title.

Proposed Subsection 393a authorizes the Secretary of Defense or the Secretaries of the Military Departments to establish and conduct commercial covers as commercial entities. In making specific reference to consultation with the Director of Central Intelligence and the Director of the Federal Bureau of Investigation, this subsection is not intended in any way to alter or derogate from the responsibilities and authorities of the Chief of Mission to a foreign country under 22 U.S.C. §3927 for direction, coordination, and supervision of all U.S. Government employees in that country (except for employees under the command of a U.S. area military commander), or from established procedures for coordination with the Secretary of State in the conduct of clandestine activities. Subsection 393a further states that the establishment of a commercial cover requires a finding in the form of a written certification by the Secretary responsible for the commercial entity that the commercial cover is necessary to the conduct of authorized intelligence collection activities.

Proposed Subsection 393b requires that the establishment and operation of such commercial covers be in accordance with prevailing commercial practice. Federal statutes that regulate the establishment and operation of commercial and industrial-type government activities shall not apply to the establishment and operation of commercial covers conducted pursuant to this section when there is a written certification by the Secretary concerned or his designee that compliance with such statutes would risk compromise of the commercial cover. It is not intended that the authorities contained in this section will relieve the Department of Defense from any requirements of applicable laws. Any exemptions apply only to the operations of the commercial cover. Commercial covers must of necessity conform to standard commercial practices. Compliance with statutory requirements that govern routine government procurement and financial transactions would not conform with such prevailing commercial practices and would flag a commercial cover entity as being connected with the United States Government, thus risking the security of the commercial cover and the underlying intelligence collection activities. In the past, Congress has exempted the FBI from certain procurement and financial requirements; e.g., the Anti-Deficiency Act, 31 U.S.C. §1341, and the Department of Defense is proposing that similar exemptions be authorized for intelligence support activities. It is virtually impossible

to foresee and list by citation every statutory requirement that may be incompatible with intelligence support activities. Therefore, Subsection 393b describes the exemptions categorically in order to capture and embody all the provisions that would risk compromising the commercial cover. Such statutes encompass laws applicable to federal appropriations, federal property management, federal acquisitions, federal employment, and government corporations. These categories of law are defined below.

"Federal acquisitions" means acquiring real estate, goods or services for the United States Government. These activities are principally governed by Titles 41 and 10 of the United States Code. Title 41 requirements that may be incompatible with intelligence support activities include:

41 U.S.C.\$5, which establishes the requirement to advertise proposed purchases and proposed contracts for supplies or services.

41 U.S.C.\$35, which requires the inclusion of contract provisions such as the Walsh-Healey Act representations and stipulations.

41 U.S.C.\$46 and \$48c, which establish the requirement to purchase blind-made products.

41 U.S.C.\$255, which limits advance payments to contractors.

41 U.S.C.\$253, which requires full and open competition.

Title 10 requirements that may be incompatible with intelligence support activities include:

10 U.S.C.\$2207, which prohibits contracting unless the contract contains specific provisions.

10 U.S.C.\$2276, which makes the contractor's books subject to Government audit.

10 U.S.C.\$2301, which prohibits cost-plus-a-percentage-of-cost contracts. This section also subjects a commercial cover to small business set-asides. This may conflict with prevailing commercial practice.

10 U.S.C.\$2304, which limits the use of negotiated procurements. Formal advertisement (sealed bids) may not be consistent with prevailing commercial practice.

10 U.S.C. §2306, which places restrictions on the kinds of contracting that may be used. These restrictions may conflict with prevailing commercial practice. This section also creates a right to examine all books, records, etc. of the contractor or subcontractor. This may also identify the intelligence support activity as a U.S. Government entity.

10 U.S.C. §2307, which prohibits certain advance payments for property and services. This may conflict with prevailing commercial practice.

10 U.S.C. §2313, which creates a right to inspect plants and audit books of certain contractors and subcontractors. Such an inspection would identify the contracting agency as a United States Government entity.

10 U.S.C. §2360, which creates a right for students contracting with the Government to be entitled to be considered as employees which may identify the contracting agency as a United States Government entity.

10 U.S.C. §2381, which requires certain measures for non-negotiated procurements which will identify the contracting agency as a United States Government entity (surety bonds, charges, etc.).

10 U.S.C. §2384, which requires supplies furnished to a military department to be uniquely marked, which will identify the contracting agency as a United States Government entity.

10 U.S.C. §2631, which restricts transportation of supplies to U.S. Flag Vessels. This may conflict with prevailing commercial practice.

"Federal property management" means the control and use of federal real and personal property. These activities are principally governed by Titles 40 and 10 of the United States Code. Restrictions that may be incompatible with commercial covers include:

40 U.S.C. §34, which limits the leasing of space in the District of Columbia.

40 U.S.C. §33a, which establishes restrictions on construction loans for office buildings by Government corporations.

40 U.S.C. §129, which establishes limits on a Government corporation's leasing of buildings in addition to the limitation on rental rates and prohibits the inclusion, in any lease, of any provision regarding the repair of real property.

10 U.S.C. §2662, which requires reporting of certain real estate transactions to Congress 30 days in advance of the transaction.

10 U.S.C. §2672, which restricts agency authority to acquire an interest in land to \$100,000 or less.

10 U.S.C. §2676, which limits authority to acquire land unless acquisition is expressly authorized by law.

"Federal employment" means restrictions, rights, duties, and entitlements flowing from Part III of Title 5 of the United States Code. The intent of this section is to exclude from the application of Title 5, U.S.C., employees of the commercial cover who are not federal employees occupying positions within the commercial cover. The restrictions, rights, duties, and entitlements that may be incompatible with prevailing commercial practice include:

5 U.S.C. §3101 et seq., which limits the authority to appoint employees.

5 U.S.C. §5101 et seq., which establishes classes of employees and prescribes levels of pay for those classes.

5 U.S.C. §4101 et seq., which establishes training programs.

5 U.S.C. §4301 et seq., which establishes a performance rating system for employees, including minimum due process.

5 U.S.C. §6101 et seq., which establishes a leave and attendance system.

5 U.S.C. §7101 et seq., which establishes a system for adverse actions, including removal.

5 U.S.C. §8101 et seq., which provides compensation for work injuries.

5 U.S.C. §8301 et seq. and 8401 et seq., which provide retirement benefits.

5 U.S.C. §8501 et seq., which provides unemployment compensation.

5 U.S.C. §8701 et seq., which provides life insurance and
5 U.S.C. §8901 et seq., which also provides life insurance.

"Government Corporations" means a corporation that is owned by the Federal Government. While commercial covers are not Government corporations in the classical sense, they nonetheless meet definitions set out in 31 U.S.C. §9101(1). Government corporations are principally governed by Title 31 of the United States Code. Requirements that pertain to Government corporations that may be incompatible with commercial covers include:

31 U.S.C. §9102, which requires that each corporation established or acquired by an agency be specifically authorized by Congress.

31 U.S.C. §9103, which requires an annual budget submission to Congress.

31 U.S.C. §9107, which requires Comptroller General's approval prior to the consolidation of a corporation's cash.

31 U.S.C. §9108, which limits the obligations that may be issued by a Government corporation.

It is intended that commercial covers utilize these exemptions only to the extent that it is necessary, and that they be conducted in a manner that is generally consistent with ordinary commercial practice. Adequate safeguards are provided in the legislation and the Department's own procedures will further ensure the proper application of the exemptions and the appropriate use of funds.

Subsection 393c authorizes the deposit and withdrawal of appropriated and generated funds in banks and other financial institutions.

Subsection 393d requires that all proceeds generated by a commercial cover that are no longer necessary to offset necessary and reasonable expenses of the commercial cover revert to the U.S. Treasury as miscellaneous receipts.

Subsection 393e requires that funds resulting from a final disposition of a commercial cover, after all obligations have been met, shall be deposited in the United States Treasury as miscellaneous receipts.

Proposed Subsection 394a grants to the Secretary of Defense or the Secretaries of the Military Departments, or their designees, the authority to acquire necessary services, personnel, fixtures, and realty in order to support a commercial cover.

Proposed Subsection 394b requires that acquisitions made pursuant to Subsection 394a utilize procedures that are consistent with prevailing commercial practice. The subsection further provides that such acquisitions shall be exempt from laws governing federal acquisitions, federal appropriations, federal property management, and federal employment where the application of such laws would risk the compromise of the commercial cover. It is not intended that the authorities contained in this section will relieve the the Department of Defense from any requirements of applicable laws. Any exemptions apply only to the operations of the commercial cover. For a discussion of these laws see the analysis above pertaining to proposed Subsection 393b.

Proposed Subsection 395a requires the Secretary of Defense to promulgate regulations to ensure oversight, operational effectiveness, and accountability of all intelligence support activities undertaken pursuant to this chapter.

Proposed Subsection 395b requires the Secretary of Defense, or the Secretaries of the Military Departments, to ensure that an annual review and audit is conducted of each intelligence support activity.

Proposed Subsection 395c makes it clear that all intelligence support activities undertaken pursuant to this chapter are to be protected from unauthorized disclosure as set forth in 50 U.S.C. §403(d)(3).

TITLE VI
NATIONAL SECURITY AGENCY
PERSONNEL AUTHORITIES IMPROVEMENTS

Section 601 would amend section 912(a) of the Internal Revenue Code of 1954 to grant tax treatment of allowances currently provided to certain Department of Defense (DoD) personnel under section 9(b)(1) of the National Security Agency Act of 1959 and section 1605 of title 10, United States Code, comparable with that provided to Foreign Service employees for similar allowances.

The Intelligence Authorization Act of 1982 (Public Law 97-89) amended the National Security Agency Act of 1959 to allow the Director of the National Security Agency to provide allowances and benefits to certain civilian employees of DoD which were comparable to those provided to the Department of State's Foreign Service and to employees of the Central Intelligence Agency. During the implementation of this statute, it was discovered that comparability of the allowances could not be achieved unless the tax exemption provided for Foreign Service and CIA employees under section 912(1)(A) and (B) of the Internal Revenue Code was also available for civilians employed and assigned to the National Security Agency.

The Intelligence Authorization Act for Fiscal Year 1984 (Public Law 98-215) amended title 10, United States Code, to provide certain allowances and benefits to personnel assigned to Defense Attaché Offices and Defense Intelligence Agency (DIA) Liaison Offices overseas comparable to those provided by the Secretary of State to officers and employees of the Foreign Service under chapter 9 of title I of the Foreign Service Act of 1980 and the provisions of 5 U.S.C. §5924(4). Although section 1605 was designed to establish equivalence between DAO/DIALO civilians and Foreign Service personnel with respect to many allowances and benefits, the actual value of the allowances and benefits to DAO and DIALO personnel is less than the value of the benefits to Foreign Service personnel, since the benefits granted under the Foreign Service Act are tax-free by virtue of section 912 of the Internal Revenue Code while those granted under section 1605 are not exempt from taxation.

The current inequity in taxation has been compounded by subsection 1232(b) of the Tax Reform Act of 1986 (Public Law 99-514). This subsection provides that civilian employees of DoD stationed in Panama may exclude from gross income allowances which are comparable to allowances excludable under section 912(a) of the Internal Revenue Code by employees of the Department of State stationed in Panama. Thus, it appears that any Defense Intelligence Agency or National Security Agency personnel stationed in Panama will, in future taxable years, be able to exclude from their gross income Foreign Service-equivalent allowances and benefits granted to them.

As a result of the provisions discussed above, there is now a situation where the tax laws treat identical allowances and benefits differently for NSA and DIA civilian personnel stationed overseas, from that of Foreign Service personnel. Moreover, under the Tax Reform Act of 1986, the tax laws now treat identical allowances and benefits differently for NSA and DIA civilian personnel in Panama from all other NSA and DIA civilian personnel stationed overseas. The addition of the proposed paragraphs (E) and (F) to section 912(1) of the Internal Revenue Code of 1954 will provide equal tax treatment for identical allowances and benefits received by NSA, DIA and Foreign Service civilian personnel stationed around the world.

The Congress is mindful of this problem and has indicated a willingness to assist. A provision identical to the amendment sought here was included in S. 1243, the Fiscal Year 1988/89 Intelligence Authorization Act as reported by the Senate Select Committee on Intelligence. During floor action on July 23, 1987, however, SSCI Chairman Boren was compelled to move to strike the provision from S. 1243 on account of a jurisdictional dispute. He indicated, however, that the Congress would be very receptive to the provision in the future (Congressional Record, July 23, 1987, pp. S 10591-92). Section 602 is resubmitted to allow the Congress to proceed in the matter.

TITLE VII
DEFENSE INTELLIGENCE AGENCY
PERSONNEL AUTHORITIES IMPROVEMENTS

Section 701 would provide the Defense Intelligence Agency (DIA) with the authority to pay additional compensation to its civilian personnel who are proficient in a foreign language which can be applied in the intelligence process--collection, analysis, production and dissemination. Currently, members of the Armed Forces, the Department of State, the National Security Agency, and the Central Intelligence Agency each have a special pay program designed to motivate personnel to maintain and enhance foreign language proficiencies. The need for such proficiency in DIA is fundamental because of the increasing demands for high quality, all-source military intelligence. In addition, it is recognized that the acquisition, maintenance and enhancement of a foreign language skill requires extraordinary effort and time normally outside of regular duty hours. Therefore, to encourage proficiency in critical foreign language communication skills (reading, speaking, and listening) in DIA, Section 701 authorizes the payment of special pay not to exceed \$3,600 per annum to civilian employees who test at or above a utility established by the Secretary of Defense.

Section 702 gives the Director the discretionary authority to ensure that DIA civilian and military personnel serving overseas receive the same degree of support received by State Department personnel serving under the same conditions.

TITLE VIII
EXPORT ADMINISTRATION ACT
NATIONAL INTELLIGENCE REVIEW

Section 801 amends section 5 of the Export Administration Act by adding a new subsection which would require the Secretary of Commerce, in consultation with directors of intelligence agencies, to compile a narrow list of items of intelligence interest, and to refer requests to export those items directly to the intelligence agencies for review. The section recognizes that technology transfer can and does impact on the national intelligence effort of the United States, and that this impact should continue to be factored into an assessment of export license applications for certain categories of dual-use technologies.

As proposed, the section provides for identification of a limited range of goods and technologies already on the Commodity Control List that are of concern to the Intelligence Community, and stipulates that applications for export licenses for these items are to be referred directly to appropriate intelligence agencies for review. This procedure will serve to further refine Intelligence Community export license review requirements and to speed up processing of such referrals. The section requires an annual review of identified goods and technology to ensure that the list is revised as needed. The section requires that the intelligence review be conducted in accordance with the same procedures, time limits and dispute resolution mechanisms as established for all other agencies involved in the licensing process.

TITLE IX
ENHANCED FBI COUNTERINTELLIGENCE AUTHORITIES

Access to Consumer Reports

Section 901 amends the Fair Credit Reporting Act to require consumer reporting agencies to provide information to the Federal Bureau of Investigation in certain foreign counterintelligence investigations. The Right to Financial Privacy Act (RFPA) was recently amended to provide the FBI mandatory access to financial records in certain foreign counterintelligence investigations. Because consumer agencies are not subject to the RFPA, however, this change is necessary to provide similar consumer credit information.

The change will provide a means by which the FBI can obtain consumer credit information, including current and former addresses and employers, when it is certified by the Director that the report relates to an agent of a foreign power, or is necessary in connection with an authorized foreign counterintelligence investigation. The provision additionally prohibits disclosure of the fact the request was made or information obtained.

Section 902 provides a means for the Federal Bureau of Investigation to obtain information relating to current and former residence and employment of individuals believed to be acting on behalf of a foreign power. The information obtained under this provision will permit the FBI to locate an agent of a foreign power, obtain historical data on actions by such an agent, and, in certain cases, assist in determining the veracity of such an agent. This information is not readily available to the FBI from any single source and is often impossible to obtain through investigation without compromising sources of information or the confidentiality of an investigation.

TITLE X
GENERAL PROVISIONS

Section 1001 authorizes the increase of appropriations authorized by the Act for salary, pay, retirement and other benefits for federal employees as necessary for increase in such benefits authorized by law.

INTELLIGENCE AUTHORIZATION ACT
FISCAL YEAR 1989

CHANGES IN EXISTING LAW

NOTE: Where applicable, changes in existing law are shown as follows: existing law in which no change is proposed is shown in roman; existing law proposed to be struck is enclosed in brackets; and new material is underscored.

TITLE I - INTELLIGENCE ACTIVITIES

Section 101: No substantive change.

Section 102: No substantive change.

Section 103: No substantive change from the Fiscal Year 1988 Act

TITLE II - INTELLIGENCE COMMUNITY STAFF

Section 201: No substantive change.

Section 202: No substantive change.

Section 203: No substantive change.

TITLE III -
CENTRAL INTELLIGENCE AGENCY
RETIREMENT AND DISABILITY SYSTEM

Section 301: No substantive change.

TITLE IV - ADMINISTRATIVE PROVISIONS

Section 401: No change in existing law.

Section 402: Amends Section 301 of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees, as amended, as follows:

* * * * *

(c) (1) The provisions of chapter 84 of title 5, United States Code shall not apply with respect to---

(A) any individual who separates, or who has separated, from Federal Government service after having been an officer or employee of the Agency subject to title II of this Act; and

(B) any officer or employee of the Agency having at least five years of civilian service which was performed before January 1, 1987, and is creditable under title II of this Act (determined without regard to any deposit or redeposit requirement under subchapter III of chapter 83 of title 5, United States Code, or under title II of this Act), or any requirement that the individual becomes subject to such subchapter or to title II of this Act after performing the service involved;

(2) Paragraph (1) shall not apply with respect to an individual who has elected under regulations prescribed under section 307 of this Act to become subject to chapter 84 of title 5, United States Code.

(3) An individual described in paragraph (1) shall be deemed to be an individual excluded under section 8402(b)(2) of title 5, United States Code.

(d) Notwithstanding the provisions of section 301(c) of the Federal Employees' Retirement System Act of 1986 and any prior elections made pursuant to that section, an employee who has been designated as a participant in the Central Intelligence Agency Retirement System, pursuant to section 203 of this Act, may elect to become subject to Chapter 84 of title 5, United States Code. An election under this paragraph:

(1) shall not be effective unless it is made during the six-month period beginning on the date on which the employee is so designated;

(2) shall take effect beginning with the first pay period beginning after the date of election; and,

(3) shall be irrevocable."

[(d)] (e) The application of the provisions of chapter 84 of title 5, United States Code, to officers and employees referred to in subsection (a) shall be subject to the exceptions and special rules provided in this title. Any provision of such chapter which is inconsistent with a special rule provided in this title shall not apply to such officers and employees.

TITLE V - SUPPORT FOR DEFENSE INTELLIGENCE
COLLECTION ACTIVITIES

Section 501: Amends Subtitle (a) of Title 10, United States Code, by adding the following new chapter after Chapter 18:

CHAPTER 19 - SUPPORT FOR INTELLIGENCE

Sec.

391. Purpose of this chapter.

392. Definition.

393. Authority to conduct commercial cover.

394. Authority to acquire logistic support, supplies, and services.

395. Oversight.

396. General Provisions.

Sec. 391. Purpose of this chapter.

The purpose of this chapter is to provide clear authority for the Secretary of Defense or the Secretaries of the Military Departments to conduct support activities necessary for authorized and appropriately coordinated intelligence collection activities of the Department of Defense.

Sec. 392. Definition.

a. "Intelligence collection activities" means the collection of foreign intelligence or counterintelligence information by intelligence components of the Department of Defense.

b. "Intelligence support activities" means those activities described in Sections 393 and 394, below.

c. "Commercial cover" means a business entity that is established solely to conceal the role of an intelligence component of the Department of Defense as it performs intelligence collection activities.

Sec. 393. Authority to conduct commercial cover.

a. The Secretary of Defense or the Secretaries of the Military Departments, after consultation with the Director of Central Intelligence and the Director of the Federal Bureau of Investigation as appropriate,

may establish and conduct commercial entities such as corporations, partnerships, sole proprietaries, and other business entities as commercial covers to support intelligence collection activities of the Department of Defense, as defined herein. Such commercial entities may be established only upon written certification by the Secretary concerned that commercial cover is necessary to the conduct of authorized intelligence collection activities.

b. The establishment and operation of commercial entities pursuant to this section shall be in accordance with prevailing commercial practices so long as such practices are not inconsistent with the purposes of commercial cover. To this end, laws applicable to federal appropriations, federal property management, federal acquisitions, federal employment and government corporations shall not apply to the establishment and operation of commercial covers upon the written certification by the Secretary concerned or his designee for the purpose that the application of such laws would risk the compromise of commercial cover.

c. The Secretary of Defense or the Secretaries of the Military Departments, or their designees, are authorized to deposit and withdraw funds appropriated for the Department of Defense used to conduct commercial cover and funds generated by the business entities authorized by this section in banks or other financial institutions.

d. Funds generated by such business entities may be used to offset necessary and reasonable expenses incurred by the commercial cover. As soon as practicable, funds generated by a commercial cover that are no longer necessary for the conduct of that commercial cover shall be deposited in the Treasury of the United States as miscellaneous receipts.

e. Upon the liquidation, dissolution, sale, or other final disposition of a commercial cover established and conducted under the provisions of this section, the funds, after obligations are met, shall be deposited in the Treasury of the United States as miscellaneous receipts.

Sec. 394. Authority to acquire logistic support, supplies, and services.

a. The Secretary of Defense or the Secretaries of the Military Departments, or their designees, may acquire any goods, services, property, buildings, facilities, space, insurance, licenses and any equipment necessary in order to establish or maintain a commercial cover.

b. Acquisitions made under the provisions of this section are to be made utilizing procedures consistent with prevailing commercial practice so long as such practices are not inconsistent with the purposes of the commercial cover. To this end, laws applicable to federal acquisitions, federal appropriations, federal property management, and federal employment shall not apply where the application of such laws would risk compromise of the commercial cover.

Sec. 395. General Provisions.

a. The Secretary of Defense shall promulgate regulations to ensure oversight, operational effectiveness, and accountability of the intelligence support activities conducted pursuant to sections 393 and 394 of this title.

b. The Secretary of Defense, or Secretaries of the Military Departments shall ensure that elements of the Department of Defense that undertake intelligence support activities pursuant to this chapter conduct an annual review and audit of such support activities.

c. Intelligence support activities authorized under this chapter shall be protected pursuant to 50 U.S.C. 403(d)(3).

d. "The table of chapters at the beginning of Subtitle A of such title and at the beginning of Part I of such subtitle are each amended by inserting after the item relating to Chapter 18 the following new item:

19. Support for Intelligence.....391.

TITLE VI
NATIONAL SECURITY AGENCY
PERSONNEL AUTHORITIES IMPROVEMENTS

Section 601 Amends Section 912(1) of chapter 1 of title 26, United States Code, to read as follows:

The following items shall not be included in gross income, and shall be exempt from taxation under this subtitle:

(1) Foreign areas allowances: in the case of civilian officers and employees of the Government of the United States, amounts received as allowances, or otherwise (but not amounts received as post differentials) under__

(A) chapter 9 of title I of the Foreign Service Act of 1980,

(B) section 4 of the Central Intelligence Agency Act of 1949, as amended (50 U.S.C., 403e),

(C) title II of the Overseas Differentials and Allowances Act, [or]

(D) subsection (e) or (f) of the first section of the Administrative Expenses Act of 1946, as amended, or section 22 of such Act, [.]

"(E) subsection (b) of section 9 of the National Security Agency Act of 1959, as amended (50 U.S.C. §402 note), whenever the allowance would be excluded from gross income under paragraphs (1)(A) or (1)(B) of this section, or

"(F) subsection 1605(a) of title 10, United States Code, whenever the allowance would be excluded from gross income under paragraph 1(A) of this section."

TITLE VII - DEFENSE INTELLIGENCE AGENCY
PERSONNEL AUTHORITIES IMPROVEMENTS

Section 701: Amends Chapter 33 of title 10, United States Code, to add at the end thereof the following new section:

"1606. Special Pay for Foreign Language Proficiency

"(a) In addition to any compensation authorized under section 1604(b) of this title, the Secretary of Defense may further compensate civilian officers and employees of the Defense Intelligence Agency: (1) who have been certified to be proficient in a foreign language identified by the Secretary of Defense as being a language where personnel proficiency is necessary for national defense considerations; and (2) who serve in positions where proficiency facilitates performance of officially assigned duties, or otherwise are proficient in a foreign language for which the Defense Intelligence Agency has a critical need."

"(b) The annual rate for special pay under subsection (a) shall be determined by the Secretary of Defense but may not exceed \$3,600."

Section 702: (a) Amends Section 1605 of title 10, United States Code as follows:

"(a) The Secretary of Defense may provide to civilian personnel of the Department of Defense who are United States nationals, who are assigned to Defense Attache Offices and Defense Intelligence Agency Liaison Offices outside the United States, and who are designated by the Secretary of Defense for purposes of this subsection, allowances and benefits comparable to those provided by the Secretary of State to officers and employees of the Foreign Service. [under paragraphs (2), (3), (4), (5), (6), (7), (8) and (13) of section 901 and sections 705 and 903 of the Foreign Service Act of 1980 (22 U.S.C. 4081 (2), (3), (4), (5), (6), (7), (8) and (13), 4025, 4083) and under section 5924(4) of title 5. The Secretary may also provide to any such civilian personnel who are subject to chapter 84 of title 5, special retirement accrual benefits in the same manner provided for certain officers and employees of the Central Intelligence Agency in section 303 of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees (50 U.S.C. 403 note)].

(b): Amends Section 431 of title 37, United States Code, as follows:

"(a) The Secretary of Defense may provide to members of the armed forces who are assigned to Defense Attache Offices and Defense Intelligence Agency Liaison Offices outside the United States and who are designated by the Secretary of Defense for the purposes of this subsection allowances and benefits comparable to those provided by the Secretary of State to officers and employees of the Foreign Service. [under paragraphs (2), (3) (4), (6), (7), (8), and (13) of section 901 and sections 705 and 903 of the Foreign Service Act of 1980 (22 U.S.C. 4081 (2), (3), (4), (6) (7), (8) and (13), 4025, 4083) and under section 5924(4) of title 5"].

TITLE VIII
EXPORT ADMINISTRATION ACT:
NATIONAL INTELLIGENCE REVIEW

Section 801: Amends Section 5 of the Export Administration Act of 1979 (50 U.S.C. App. 2404) by adding at the end thereof the following new subsection:

"(r) National Intelligence Review: The Secretary, in consultation with the Directors of intelligence agencies with export control responsibilities, shall identify annually those Control List goods and technologies which, if exported, would prove detrimental to the national intelligence effort of the United States, and shall submit requests for exports of such goods and technologies directly to the agencies for review. Intelligence agency Directors shall review submissions made to them pursuant to this paragraph, and shall advise the Secretary directly of their recommendation using the same procedures and dispute resolution mechanism as those established for the Secretary of Defense in Section 10 (g)(2) (50 U.S.C. App. §2409 (g) (2))."

TITLE IX
ENHANCED FBI COUNTERINTELLIGENCE AUTHORITIES

Section 901 (a): Amends Section 1681b of title 15, United States Code, entitled "Permissible Purposes of Consumer Reports", by adding the following new paragraph at the end thereof:

A consumer reporting agency may furnish a consumer report under the following circumstances and no other:

* * * * *

"4 To the Federal Bureau of Investigation when presented with a request for a consumer report made pursuant to this subsection by the Federal Bureau of Investigation providing that the Director of the Federal Bureau of Investigation, or his designee, certifies in writing to the consumer reporting agency that such records are sought for foreign counterintelligence purposes and that there are specific and articulable facts giving reason to believe the person to whom the requested consumer report relates is an agent of a foreign power as defined in Section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. §1801). No consumer reporting agency, or officer, employee, or agent of such institution shall disclose to any person that the Federal Bureau of Investigation has sought or obtained access to a consumer report under this paragraph."

(b): Amends Section 1681f of Title 15, United States Code, entitled, "Disclosures to Government Agencies," to read as follows:

(1) Notwithstanding the provisions of section 1681b of this title, a consumer reporting agency may furnish identifying information respecting any consumer limited to his name, address, former addresses, places of employment, or former places of employment, to a government agency.

(2) Notwithstanding the provision of Section 1681 (b) of this Title, a consumer reporting agency shall furnish identifying information respecting any consumer, limited to his/her name, address, former address, place of employment, or former place of employment, to a representative of the Federal Bureau of Investigation when presented with a written request signed by the Director of the Federal Bureau of Investigation, or his designee, stating that the information is sought in connection with an authorized foreign counterintelligence investigation.

(3) No consumer reporting agency, or officer, employee, or agent of such institution, shall disclose to any person that the Federal Bureau of Investigation has sought or obtained a consumer report under this section.

Section 902: Amends Section 1306 of Title 42, United States Code, entitled "Disclosure of Information in Possession of Department of Health and Human Services or Department of Labor," to be amended by adding the following new paragraph at the end thereof:

"(f) FBI REQUESTS FOR FOREIGN COUNTERINTELLIGENCE PURPOSES

Notwithstanding Section 1306(a), the Secretary of Health and Human Services, or the Secretary of Labor, as the case may be, shall disclose information in the Secretary's possession relating to the current and prior residences of a named person, when presented with a certification signed by the Director of the Federal Bureau of Investigation, or the Director's designee, stating that:

(1) The information is sought in connection with an authorized foreign counterintelligence investigation; and,

(2) There are specific and articulable facts giving reason to believe the person is an agent of a foreign power as defined in Section 101 of the Foreign Intelligence Surveillance Act of 1978 ((50 U.S.C. §1801))."

TITLE X
GENERAL PROVISIONS

Section 1001: No substantive change.

INTELLIGENCE AUTHORIZATION ACT,
FISCAL YEAR 1989

COST ANALYSIS

TITLE I - INTELLIGENCE ACTIVITIES

SEC. 101. Fiscal Year 1989 authorizations are contained in the Classified Schedule of Authorizations.

SEC. 102. Cost analysis not applicable.

SEC. 103. Cost contingent upon exercise of permissive authority.

TITLE II - INTELLIGENCE COMMUNITY STAFF

SEC. 201. The Fiscal Year 1989 authorization is \$.

SEC. 202. Cost analysis not applicable.

SEC. 203. Cost analysis not applicable.

TITLE III - CENTRAL INTELLIGENCE AGENCY
RETIREMENT AND DISABILITY SYSTEM

SEC. 301. The Fiscal Year 1989 authorization is \$144,500,000.00.

TITLE IV
CENTRAL INTELLIGENCE AGENCY
ADMINISTRATIVE PROVISIONS

SEC. 401. Cost contingent upon exercise of the authority granted.

SEC. 402. Cost contingent upon exercise of the authority granted.

TITLE V - SUPPORT FOR DEFENSE INTELLIGENCE
COLLECTION ACTIVITIES

SEC. 501. Enactment of this legislation should not result in any additional cost to the Department of Defense or the Federal Government.

TITLE VI
NATIONAL SECURITY AGENCY
PERSONNEL AUTHORITIES IMPROVEMENTS

SEC. 601. The enactment of this section would result in the loss to the government of income tax revenues otherwise collectible on the exempted sums.

TITLE VII
DEFENSE INTELLIGENCE AGENCY
PERSONNEL AUTHORITIES IMPROVEMENTS

SEC. 701. Cost contingent on necessity to use prescribed authority.

SEC. 702. Cost contingent on necessity to use prescribed authority.

TITLE VIII
EXPORT ADMINISTRATION ACT
NATIONAL INTELLIGENCE REVIEW

SEC. 801. The enactment of this section will result in little or no additional cost to the government.

TITLE IX
ENHANCED FBI COUNTERINTELLIGENCE AUTHORITIES

Access to Consumer Reports

SEC. 901 This change will allow the FBI to obtain accurate reliable information, often unobtainable from any other source. There are no known costs associated with the change. In many cases the provision will save a significant expenditure of man hours necessary to develop similar information from other sources. In other cases, without this provision, investigations will be terminated because insufficient information is available to further identify the subject and/or continue the investigation.

SEC. 902. This change will allow the Federal Bureau of Investigation to obtain accurate reliable information, often unobtainable from any other source. There are no known costs associated with the change. In many cases the provision will save a significant expenditure of man hours necessary to develop similar information from other sources. In other cases, without this provision, investigations will be terminated because insufficient information is available to further identify the subject and/or continue the investigation.

TITLE X
GENERAL PROVISIONS

SEC. 1001. Cost analysis not applicable.

5 January 1987
OCA 87-6058

SUBJECT: FY '89 Intelligence Authorization Bill

OCA/LEG, [] (5 January 1987)

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First Draft
Intelligence Authorization Act for Fiscal Year 1989

OCA/Leg (9 November 1987)

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A-104-1R

OCA 87-5668
9 November 1987

MEMORANDUM FOR: (See Distribution)

FROM:

STAT

SUBJECT: First Draft - Intelligence Authorization Act for
Fiscal Year 1989

Attached for your review and comment is a copy of the first draft of the "Intelligence Authorization Act for Fiscal Year 1989."

This draft was prepared based on the "Intelligence Community Legislative Program for the Second Session of the 100th Congress", on which we previously solicited your comments, and on other items which have come to our attention in the interim.

As you probably know, as of this date, the conferees on the Fiscal Year 1988 Intelligence Authorization Act have not reached final agreement on the provisions to be included in that bill. This draft FY 1989 bill was prepared on the assumption that a number of items in the House and/or Senate versions of that legislation will be included in the final conference version. Should this not be the case, items not accepted by the conferees will be considered for inclusion on a case-by-case basis.

We believe that the following items in the attached package are of particular interest:

DoD Intelligence Authorities Enhancement. Sections 801 and 802 of the bill would provide new, fairly broad authorities for Department of Defense (DoD) intelligence activities: foreign materiel acquisition (§801) and foreign military intelligence liaison training (§802). As these are new and potentially controversial proposals, your attention is particularly directed to them.

Export Administration Act - National Security Report. This provision would amend the Act in question so as to impose the requirement of a national security review on selected items on the Control List to be exported. As this is a new and potentially controversial item, your attention is also particularly directed to this section.

Drug and Alcohol Abuse. As you know, for the last few years the draft bill sent to the Congress has included a provision exempting the Central Intelligence Agency, the National Security Agency and the Defense Intelligence Agency from drug and alcohol abuse rehabilitation legislation. The intelligence committees, however, have not included this provision in their versions of the bill.

This year, in an effort to improve the proposal's chances in this area, representatives of this office, the CIA Office of General Counsel and selected Community representatives hope to meet in early December with committee staff to review the underlying issues. The outcome of those discussions will serve as a guide in presenting the matter to the Congress.

FBI CI Access to Tax Records. As you may know, for the last two years the FBI has submitted for inclusion in the bill a provision which would give it access to Internal Revenue Service (IRS) tax records for counterintelligence purposes. The IRS has strongly and repeatedly objected to this provision in the Office of Management and Budget (OMB) review process. As a result, the bill's clearance was delayed and the provision ultimately deleted from the bill.

Accordingly, the provision is not being included in this draft pending the outcome of discussions between the IRS and FBI on the matter. Those negotiations will serve as a guide as to whether or how the matter is to be further pursued.

CIARDS Amendments - Former Spouses and Miscellaneous. We have received several proposals to amend the laws governing the Central Intelligence Agency Retirement and Disability System (CIARDS). These would address "former spouses" and other miscellaneous issues, including disability annuitants. Because the conferees have not taken final action on the "former spouses" legislation in the FY '88 bill and because of the length and highly technical nature of these recent proposals, they are not being included in the bill at this time. They will remain available, however, for future inclusion if circumstances so warrant.

Other Personnel Proposals. Pending final action on the work of the Central Intelligence Agency's Human Resource Modernization and Compensation Task Force, legislation to implement the Task Force's work is not being included in this draft of the bill, but will remain available for future inclusion or other appropriate action.

Any questions on the bill should be directed to this office. Because of deadlines imposed on us by OMB, I would greatly appreciate your comments by 20 November 1987.



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A BILL

To authorize appropriations for fiscal year 1989 for intelligence and intelligence-related activities of the United States Government, the Intelligence Community Staff, and the Central Intelligence Agency Retirement and Disability System, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that this Act may be cited as the "Intelligence Authorization Act for Fiscal Year 1989".

TITLE I - INTELLIGENCE ACTIVITIES

Authorization of Appropriations

SEC. 101. Funds are hereby authorized to be appropriated for fiscal year 1989 for the conduct of the intelligence and intelligence-related activities of the following elements of the United States Government:

- (1) The Central Intelligence Agency.
- (2) The Department of Defense.
- (3) The Defense Intelligence Agency.
- (4) The National Security Agency.
- (5) The Department of the Army, the Department of the Navy, and the Department of the Air Force.
- (6) The Department of State.
- (7) The Department of the Treasury.
- (8) The Department of Energy.
- (9) The Federal Bureau of Investigation.
- (10) The Drug Enforcement Administration.

Classified Schedule of Authorizations

SEC. 102. The amounts authorized to be appropriated under section 101, and the authorized personnel ceilings as of September 30, 1988, for the conduct of the intelligence and intelligence-related activities of the elements listed in such section, are those specified in the classified Schedule of Authorizations prepared by the Committee of Conference to accompany () of the One Hundredth Congress. That Schedule of Authorizations shall be made available to the Committee on Appropriations of the Senate and House of Representatives and to the President. The President shall provide for suitable distribution of the Schedule, or of appropriate portions of the Schedule, within the Executive Branch.

Personnel Ceiling Adjustments

SEC. 103. The Director of Central Intelligence may authorize employment of civilian personnel in excess of the numbers authorized for fiscal year 1989 under sections 102 and 202 of this Act when he determines that such action is necessary to the performance of important intelligence functions, except that such number may not, for any element of the Intelligence Community, exceed 2 per centum of the number of civilian personnel authorized under such sections for such element. The Director of Central Intelligence shall promptly notify the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate whenever he exercises the authority granted by this section.

TITLE II - INTELLIGENCE COMMUNITY STAFF

Authorization of Appropriations

SEC. 201. There is authorized to be appropriated for the Intelligence Community Staff for fiscal year 1989 the sum of \$, ,000.00.

Authorization of Personnel End Strength

SEC. 202.(a) The Intelligence Community Staff is authorized and full-time personnel as of September 30, 1988. Such personnel of the Intelligence Community Staff may be permanent employees of the Intelligence Community Staff or personnel detailed from other elements of the United States Government.

(b) During fiscal year 1989, personnel of the Intelligence Community Staff shall be selected so as to provide appropriate representation from elements of the United States Government engaged in intelligence and intelligence-related activities.

(c) During fiscal year 1989, any officer or employee of the United States or a member of the Armed Forces who is detailed to the Intelligence Community Staff from another element of the United States Government shall be detailed on a reimbursable basis, except that any such officer, employee or member may be detailed on a nonreimbursable basis for a period of less than one year for the performance of temporary functions as required by the Director of Central Intelligence.

Intelligence Community Staff Administered
in Same Manner as Central Intelligence Agency

SEC. 203. During fiscal year 1989, activities and personnel of the Intelligence Community Staff shall be subject to the provisions of the National Security Act of 1947 (50 U.S.C. 401 et seq.) and the Central Intelligence Agency Act of 1949 (50 U.S.C. 403a et seq.) in the same manner as activities and personnel of the Central Intelligence Agency.

TITLE III - CENTRAL INTELLIGENCE AGENCY
RETIREMENT AND DISABILITY SYSTEM

Authorization of Appropriations

SEC. 301. There is authorized to be appropriated for the Central Intelligence Agency Retirement and Disability Fund for fiscal year 1989 the sum of \$, ,000.00.

TITLE IV
CENTRAL INTELLIGENCE AGENCY
ADMINISTRATIVE PROVISIONS

One-Time Regrant of FY-1981 Personnel Authority

SEC. 401. (a) Whenever the Director of Central Intelligence finds during fiscal year 1989 that an employee or former employee of the Central Intelligence Agency has unfairly had his career with the Agency adversely affected as a result of allegations concerning the loyalty to the United States of such employee or former employee, the Director may grant such employee or former employee such monetary or other relief (including reinstatement and promotion) as the Director considers appropriate in the interest of fairness.

(b) Any action of the Director under this section is not reviewable in any other forum or in any court.

(c) The authority of the Director to make payments under subsection (a) is effective only to the extent that appropriated funds are available for that purpose.

FERS-CIARDS Second Chance Election Authority

SEC. 402. (a) Subsection (d) of section 301 of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees, as amended, is redesignated as subsection (e); and

(b) A new subsection, subsection (d), is added after the current subsection (c) to read as follows:

"(d) Notwithstanding the provisions of section 301(c) of the Federal Employees' Retirement System Act of 1986 and any prior elections made pursuant to that section, an employee who has been designated as a participant in the Central Intelligence Agency Retirement System, pursuant to section 203 of this Act, may elect to become subject to Chapter 84 of title 5, United States Code. An election under this paragraph:

(1) shall not be effective unless it is made during the sixth month period beginning on the date on which the employee is so designated;

(2) shall take effect beginning with the first pay period beginning after the date of election; and

(3) shall be irrevocable."

TITLE V - SUPPORT FOR DEFENSE INTELLIGENCE
COLLECTION ACTIVITIES

SEC. 501. (a) Subtitle A of Title 10, United States Code, is amended by adding the following new chapter after Chapter 18:

"CHAPTER 19 - SUPPORT FOR INTELLIGENCE

SEC.

391. Purpose of this chapter.

392. Definition.

393. Authority to conduct commercial cover.

394. Authority to acquire logistic support, supplies, and services.

395. Oversight.

396. General Provisions.

"SEC. 391. Purpose of this chapter.

The purpose of this chapter is to provide statutory authority for the Secretary of Defense or the Secretaries of the Military Departments to conduct support activities necessary for authorized and appropriately coordinated intelligence collection activities of the Department of Defense.

"SEC. 392. Definition.

a. "Intelligence collection activities" means the collection of foreign intelligence or counterintelligence information by intelligence components of the Department of Defense.

b. "Intelligence support activities" means those activities described in sections 393 and 394, below.

c. "Commercial cover" means a business entity that is established solely to conceal the role of an intelligence component of the Department of Defense as it performs intelligence collection activities.

"SEC. 393. Authority to conduct commercial cover.

a. "The Secretary of Defense or the Secretaries of the Military Departments, after consultation with the Director of Central Intelligence and the Director of the Federal Bureau of Investigation, as appropriate, may establish and conduct commercial entities such as corporations, partnerships, sole proprietaries, and other business entities as commercial covers to support intelligence collection activities of the Department of Defense, as defined herein. Such commercial entities may be established only upon written certification by the Secretary concerned that commercial cover is necessary to the conduct of authorized intelligence collection activities.

b. "The establishment and operation of commercial entities pursuant to this section shall be in accordance with prevailing commercial practices so long as such practices are not inconsistent with the purposes of commercial cover. To this end, laws applicable to federal appropriations, federal property management, federal acquisitions, federal employment and government corporations shall not apply to the establishment and operation of commercial covers upon the written certification by the Secretary concerned or his designee for the purpose that the application of such laws would risk the compromise of commercial cover.

c. "The Secretary of Defense or the Secretaries of the Military Departments, or their designees, are authorized to deposit and withdraw funds appropriated for the Department of Defense used to conduct commercial cover and funds generated by the business entities authorized by this section in banks or other financial institutions.

d. "Funds generated by such business entities may be used to offset necessary and reasonable expenses incurred by the commercial cover. As soon as practicable, funds generated by a commercial cover that are no longer necessary for the conduct of that commercial cover shall be deposited in the Treasury of the United States as miscellaneous receipts.

e. "Upon the liquidation, dissolution, sale, or other final disposition of a commercial cover established and conducted under the provisions of this section, the funds, after obligations are met, shall be deposited in the Treasury of the United States as miscellaneous receipts.

"SEC. 394. Authority to acquire logistic support, supplies, and services.

a. "The Secretary of Defense or the Secretaries of the Military Departments, or their designees, may acquire any goods, services, property, buildings, facilities, space, insurance, licenses and any equipment necessary in order to establish or maintain a commercial cover.

b. "Acquisitions made under the provisions of this section are to be made utilizing procedures consistent with prevailing commercial practice so long as such practices are not inconsistent with the purposes of the commercial cover. To this end, laws applicable to federal acquisitions, federal appropriations, federal property management, and federal employment shall not apply where the application of such laws would risk compromise of the commercial cover.

"SEC. 395. General Provisions.

a. "The Secretary of Defense shall promulgate regulations to ensure oversight, operational effectiveness, and accountability of the intelligence support activities conducted pursuant to sections 393 and 394 of this title.

b. "The Secretary of Defense or Secretaries of the Military Departments shall ensure that elements of the Department of Defense that undertake intelligence support activities pursuant to this chapter conduct an annual review and audit of such support activities.

c. "Intelligence support activities authorized under this chapter shall be protected pursuant to 50 U.S.C. 403(d)(3).

(b) The table of chapters at the beginning of subtitle A of such title and at the beginning of Part I of such subtitle are each amended by inserting after the item relating to chapter 18 the following new item:

"19. Support for Intelligence.....391".

TITLE VI - NATIONAL SECURITY AGENCY
PERSONNEL AUTHORITIES IMPROVEMENTS

NSA Graduate-Level Critical Skills Program

SEC. 601. (a) Section 16 (a) of the National Security Agency Act of 1959 is amended to read as follows:

"Sec. 16 (a). The purposes of this section are: (1) to establish an undergraduate training program, which may lead to the baccalaureate degree, to facilitate the recruitment of individuals, particularly minority high school students, with a demonstrated capability to develop skills critical to the mission of the National Security Agency, including mathematics, computer science, engineering, and foreign languages; and (2) to establish a graduate training program which may lead to a graduate degree to facilitate the recruitment of new employees with a demonstrated capability to develop skills critical to this mission of NSA."

(b) Section 16 (b) is amended by inserting the words "or graduate" after "undergraduate".

(c) Paragraph (2) of Section 16 (e) is amended by inserting the words "or graduate" after "undergraduate".

NSA/DIA Employee Tax Equalization

SEC. 602. Section 912 (1) of chapter 1 of title 26, United States Code, is amended by striking the "or" in paragraph (C) and inserting at the end thereof the following new paragraphs:

"(E) subsection (b) of section 9 of the National Security Agency Act of 1959, as amended (50 U.S.C. §402 note), whenever the allowance would be excluded from gross income under paragraphs (1)(A) or (1)(B) of this section, or

"(F) subsection 1605 (a) of title 10, United States Code, whenever the allowance would be excluded from gross income under paragraph 1(A) of this section."

TITLE VII - DEFENSE INTELLIGENCE AGENCY
PERSONNEL AUTHORITIES IMPROVEMENTS

DIA Foreign Language Proficiency Pay

SEC. 701. Chapter 33 of title 10, United States Code, is amended by adding at the end thereof the following new section:

"1606. Special Pay for Foreign Language Proficiency

"(a) In addition to any compensation authorized under section 1604(b) of this title, the Secretary of Defense may further compensate civilian officers and employees of the Defense Intelligence Agency: (1) who have been certified to be proficient in a foreign language identified by the Secretary of Defense as being a language where personnel proficiency is necessary for national defense considerations; and (2) who serve in positions where proficiency facilitates performance of officially assigned duties, or otherwise are proficient in a foreign language for which the Defense Intelligence Agency has a critical need."

"(b) The annual rate for special pay under subsection (a) shall be determined by the Secretary of Defense but may not exceed \$3,600."

DIA Overseas Personnel Benefits Comparability

SEC. 702. (a) Section 1605 of title 10, United States Code, is amended by deleting from the first sentence of paragraph (a) thereof everything appearing after the phrase "employees of the Foreign Service".

(b) Section 432 of title 37, United States Code, is amended by deleting from the first sentence of paragraph (a) thereof everything which appears after the words "employees of the Foreign Service".

TITLE VIII
DOD INTELLIGENCE AUTHORITIES ENHANCEMENTS

DoD Foreign Materiel Acquisition Authority

SEC. 801. Title 10, United States Code, is amended by adding a new chapter, chapter 154, to read as follows:

"Chapter 154 - Foreign Materiel Utilization

"2590. Notwithstanding any other provision of law, the Secretary of Defense may acquire or accept foreign materiel important to the military or intelligence interests of the United States and may exchange, accept or furnish information or materiel pursuant to an agreement with a foreign country or international organization for the production or exchange of intelligence. Transfers of foreign materiel under this chapter are subject to the provisions of section 503 of the National Security Act of 1947."

"2591. Notwithstanding any other provision of law, sums appropriated to the Department of Defense shall be available for acquisition of foreign materiel when such acquisition is determined by the Secretary to be important to the military or intelligence interests of the United States."

DoD Intelligence Training Authority

SEC. 802. Chapter 101 of title 10, United States Code, is amended by adding at the end thereof the following new section:

"2011. Training of Certain Foreign Personnel.

"Notwithstanding any other provision of law, the Secretary of Defense may provide training in intelligence collection, analysis and dissemination to personnel of the armed forces of any other country where the Secretary determines that such training will further the collection, production or dissemination of foreign intelligence or counterintelligence by the Department of Defense."

TITLE IX
EXPORT ADMINISTRATION ACT:
NATIONAL INTELLIGENCE REVIEW

EAA National Intelligence Review

SEC. 901. Section 5 of the Export Administration Act of 1979 (50 U.S.C. App. 2404) is amended by adding at the end thereof the following new subsection:

"(t) National Intelligence Review---The Secretary, in consultation with the Director of intelligence agencies with export control responsibilities, shall identify annually those Control List goods and technologies which, if exported, would prove detrimental to the national intelligence effort of the United States, and shall submit requests for exports of such goods and technologies directly to the agencies for review. Intelligence agency Directors shall review submissions made to them pursuant to this paragraph, and shall advise the Secretary directly of their recommendation using the same procedures and dispute resolution mechanism as those established for the Secretary of Defense in Section 19(g)(2)."

TITLE X
FBI ENHANCED COUNTERINTELLIGENCE AUTHORITIES

Access to Consumer Reports

SEC. 1001 (a) Section 1681b of title 15, United States Code, entitled "Permissible Purposes of Consumer Reports", is amended by adding the following new paragraph at the end thereof:

"(4) To the Federal Bureau of Investigation when presented with a request for a consumer report made pursuant to this subsection by the Federal Bureau of Investigation providing that the Director of the Federal Bureau of Investigation, or his designee, certifies in writing to the consumer reporting agency that such records are sought for foreign counterintelligence purposes and that there are specific and articulable facts giving reason to believe the person to whom the requested consumer report relates is an agent of a foreign power as defined in Section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. §1801). No consumer reporting agency, or officer, employee, or agent of such institution shall disclose to any person that the Federal Bureau of Investigation has sought or obtained access to a consumer report under this paragraph."

(b) Section 1681f of Title 15, United States Code, entitled "Disclosures to Government Agencies," is amended by inserting "(1)" before the existing paragraph and adding the following new paragraphs:

"(2) Notwithstanding the provision of Section 1681b of this Title, a consumer reporting agency shall furnish identifying information respecting any consumer, limited to his/her name, address, former address, place of employment, or former place of employment, to a representative of the Federal Bureau of Investigation when presented with a written request signed by the Director of the Federal Bureau of Investigation, or his designee, stating that the information is sought in connection with an authorized foreign counterintelligence investigation.

(3) No consumer reporting agency, or officer, employee, or agent of such institution, shall disclose to any person that the Federal Bureau of Investigation has sought or obtained a consumer report under this section."

Access to Social Security Information

SEC. 1002. Section 1306 of Title 42, United States Code, entitled "Disclosure of Information in Possession of Department of Health and Human Services or Department of Labor," is amended by adding the following new paragraph:

"(f) FBI REQUESTS FOR FOREIGN COUNTERINTELLIGENCE PURPOSES.

Notwithstanding Section 1306(a), the Secretary of Health and Human Services, or the Secretary of Labor, as the case may be, shall disclose information in the Secretary's possession relating to the current and prior residences of a named person, when presented with a certification signed by the Director of the Federal Bureau of Investigation, or the Director's designee, stating that:

(1) The information is sought in connection with an authorized foreign counterintelligence investigation; and,

(2) There are specific and articulable facts giving reason to believe the person is an agent of a foreign power as defined in Section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. §1801)."

TITLE XI
GENERAL PROVISIONS

Increase in Employee Compensation
and Benefits Authorized by Law

SEC. 1101. Appropriations authorized by this Act for salary, pay, retirement, and other benefits for Federal employees may be increased by such additional or supplemental amounts as may be necessary for increases in such compensation or benefits authorized by law.

INTELLIGENCE AUTHORIZATION ACT
FISCAL YEARS 1989

SECTION-BY-SECTION ANALYSIS
AND EXPLANATION

TITLE I
INTELLIGENCE ACTIVITIES

Section 101 lists the departments, agencies, and other elements of the United States Government for whose intelligence and intelligence-related activities the Act authorizes appropriations for Fiscal Year 1989.

Section 102 makes clear that details of the amounts authorized to be appropriated for intelligence and intelligence-related activities and personnel ceilings covered under this title for Fiscal Year 1989 are contained in a classified Schedule of Authorizations. The Schedule of Authorizations is incorporated into the Act by this section.

Section 103 authorizes the Director of Central Intelligence in Fiscal Year 1989 to expand the personnel ceilings applicable to the components of the Intelligence Community under Sections 102 and 202 by an amount not to exceed two percent of the total of the ceilings applicable under these sections. The Director may exercise this authority only when necessary to the performance of important intelligence functions or to the maintenance of a stable personnel force, and any exercise of this authority must be reported to the two intelligence committees of the Congress.

TITLE II
INTELLIGENCE COMMUNITY STAFF

Section 201 authorizes appropriations in the amount of \$, for the staffing and administration of the Intelligence Community Staff for Fiscal Year 1989.

Section 202 provides details concerning the number and composition of Intelligence Community Staff personnel.

Subsection (a) authorizes full-time personnel for the Intelligence Community Staff for Fiscal Year 1989, and provides that personnel of the Intelligence Community Staff may be permanent employees of the Staff or detailed from various elements of the United States Government.

Subsection (b) requires that detailed employees be selected so as to provide appropriate representation from the various departments and agencies engaged in intelligence and intelligence-related activities.

Subsection (c) requires that personnel be detailed on a reimbursable basis except for temporary situations.

Section 203 provides that the Director of Central Intelligence shall utilize existing statutory authority to manage the activities and to pay the personnel of the Intelligence Community Staff. This language reaffirms the statutory authority of the Director of Central Intelligence and clarifies the legal status of the Intelligence Community Staff. In the case of detailed personnel, it is understood that the authority of the Director of Central Intelligence to discharge personnel extends only to discharge from service at the Intelligence Community Staff and not from federal employment or military service.

TITLE III
CENTRAL INTELLIGENCE AGENCY
RETIREMENT AND DISABILITY SYSTEM

Section 301 authorizes Fiscal Year 1989 appropriations in the amount of \$ for the Central Intelligence Agency Retirement and Disability Fund for Fiscal Year 1989.

TITLE IV - ADMINISTRATIVE PROVISIONS

Section 401 is a one-year reauthorization of authority previously granted, also on a one-year basis, to the Director of Central Intelligence by Section 405 of the Intelligence Authorization Act for Fiscal Year 1981 (Public Law 96-450, October 14, 1980). That section granted the Director the authority review the cases of individuals whose Agency careers had been adversely affected as a result of allegations concerning their loyalty to the United States and determine whether or not monetary or other relief ought to be provided them. Decisions made under that authority were not reviewable in any court and the awards were available subject to the availability of appropriated funds.

At the time, the Director reviewed and took action on a number of cases and the authority lapsed at the end of Fiscal Year 1981.

Since then, new evidence in one of the cases reviewed under that authority and decided against the individual has come to the attention of the Agency. Section 405 seeks to regrant that same authority to the Director so that he may reopen the case, consider the new evidence and reach an appropriate determination.

Section 401 would do this by reenacting verbatim the language of Section 405 of the FY-1981 Act, substituting the phrase "during fiscal year 1989" for the phrase "during Fiscal Year 1981".

Section 402 would amend the Central Intelligence Agency Retirement and Disability Act (CIARDS) to permit newly designated CIARDS participants to elect to join the Federal Employees Retirement System (FERS), notwithstanding any prior election that they may have made, and notwithstanding the provisions of Section 301 of the FERS Act that such prior elections are irrevocable.

This is necessary to correct an inequity that is unique to newly-designated participants in the CIARDS system. Under existing law, employees under the Civil Service Retirement and Disability System (CSRDS) are given a one-time opportunity to make an irrevocable election to participate in the new FERS. However, this election must be made within the period from 1 July 1987 through 31 December 1987. This requires employees who are not now designated as CIARDS participants, but who may be so designated in the future to make an election to join FERS without knowing whether their election will eventually result in participation in CSRDS, CIARDS, FERS or the special FERS category for "section 203 criteria employees". This situation makes it impossible for an employee to make an informed decision.

If the employee opts for FERS before qualifying for CIARDS, he/she runs the risk of having to remain in a retirement system that would provide a smaller retirement benefit than CSRS, CIARDS or FERS Special. On the other hand, if the employee does not choose FERS he runs the risk of choosing a retirement system, CIARDS, for which he may ultimately not be eligible.

To remedy this inequity, Section 402 would make a second election period available to newly-designated participants in CIARDS. This election period would be for six months, starting with the day of designation by the Director of Central Intelligence. In many respects, this proposal mirrors existing provisions in the FERS Act for reemployed individuals: Section 301 of the FERS Act permits reemployed individuals who are under CSRS to elect to transfer to FERS during the six-month period beginning on the date that employment commences.

The effective date of an election under Section 402 would be the first pay period after the date of the election, similar to the provisions of FERS. This election would, of course, be irrevocable.

TITLE V SUPPORT FOR DEFENSE INTELLIGENCE COLLECTION ACTIVITIES

Section 501 adds a new Chapter 19 to Subtitle A of Title 10, U.S.C., authorizing the establishment and conduct of corporations or other business entities to provide support for Department of Defense undercover intelligence collection activities.

Proposed Subsection 391 states that the purpose of proposed Chapter 19 is to provide the Secretary of Defense and the Secretaries of the Military Departments the statutory authority to establish commercial covers to support intelligence collection activities.

Proposed Subsection 392a defines a new term, "intelligence collection activities". The use of a new term rather than the redefining of the term "intelligence activities" precludes the development of two definitions (E.O. 12333 & statutory) for the same term.

Proposed Subsection 392b defines the term "intelligence support activities" to mean the establishment, acquisition and conduct of commercial cover systems and the acquisition of logistical support thereto as described in Subsections 393 and 394.

Proposed Subsection 392c defines a new term, "commercial cover", which is used throughout the proposed Chapter 19 of this title.

Proposed Subsection 393a authorizes the Secretary of Defense or the Secretaries of the Military Departments to establish and conduct commercial covers as commercial entities. In making specific reference to consultation with the Director of Central Intelligence and the Director of the Federal Bureau of Investigation, this subsection is not intended in any way to alter or derogate from the responsibilities and authorities of the Chief of Mission to a foreign country under 22 U.S.C. §3927 for direction, coordination, and supervision of all U.S. Government employees in that country (except for employees under the command of a U.S. area military commander), or from established procedures for coordination with the Secretary of State in the conduct of clandestine activities. Subsection 393a further states that the establishment of a commercial cover requires a finding in the form of a written certification by the Secretary responsible for the commercial entity that the commercial cover is necessary to the conduct of authorized intelligence collection activities.

Proposed Subsection 393b requires that the establishment and operation of such commercial covers be in accordance with prevailing commercial practice. Federal statutes that regulate the establishment and operation of commercial and industrial-type government activities shall not apply to the establishment and operation of commercial covers conducted pursuant to this section when there is a written certification by the Secretary concerned or his designee that compliance with such statutes would risk compromise of the commercial cover. It is not intended that the authorities contained in this section will relieve the Department of Defense from any requirements of applicable laws. Any exemptions apply only to the operations of the commercial cover. Commercial covers must of necessity conform to standard commercial practices. Compliance with statutory requirements that govern routine government procurement and financial transactions would not conform with such prevailing commercial practices and would flag a commercial cover entity as being connected with the United States Government, thus risking the security of the commercial cover and the underlying intelligence collection activities. In the past, Congress has exempted the FBI from certain procurement and financial requirements; e.g., the Anti-Deficiency Act, 31 U.S.C. §1341, and the Department of Defense is proposing that similar exemptions be authorized for intelligence support activities. It is virtually impossible

to foresee and list by citation every statutory requirement that may be incompatible with intelligence support activities. Therefore, Subsection 393b describes the exemptions categorically in order to capture and embody all the provisions that would risk compromising the commercial cover. Such statutes encompass laws applicable to federal appropriations, federal property management, federal acquisitions, federal employment, and government corporations. These categories of law are defined below.

"Federal acquisitions" means acquiring real estate, goods or services for the United States Government. These activities are principally governed by Titles 41 and 10 of the United States Code. Title 41 requirements that may be incompatible with intelligence support activities include:

41 U.S.C.§5, which establishes the requirement to advertise proposed purchases and proposed contracts for supplies or services.

41 U.S.C.§35, which requires the inclusion of contract provisions such as the Walsh-Healey Act representations and stipulations.

41 U.S.C.§46 and §48c, which establish the requirement to purchase blind-made products.

41 U.S.C.§255, which limits advance payments to contractors.

41 U.S.C.§253, which requires full and open competition.

Title 10 requirements that may be incompatible with intelligence support activities include:

10 U.S.C.§2207, which prohibits contracting unless the contract contains specific provisions.

10 U.S.C.§2276, which makes the contractor's books subject to Government audit.

10 U.S.C.§2301, which prohibits cost-plus-a-percentage-of-cost contracts. This section also subjects a commercial cover to small business set-asides. This may conflict with prevailing commercial practice.

10 U.S.C.§2304, which limits the use of negotiated procurements. Formal advertisement (sealed bids) may not be consistent with prevailing commercial practice.

10 U.S.C. §2306, which places restrictions on the kinds of contracting that may be used. These restrictions may conflict with prevailing commercial practice. This section also creates a right to examine all books, records, etc. of the contractor or subcontractor. This may also identify the intelligence support activity as a U.S. Government entity.

10 U.S.C. §2307, which prohibits certain advance payments for property and services. This may conflict with prevailing commercial practice.

10 U.S.C. §2313, which creates a right to inspect plants and audit books of certain contractors and subcontractors. Such an inspection would identify the contracting agency as a United States Government entity.

10 U.S.C. §2360, which creates a right for students contracting with the Government to be entitled to be considered as employees which may identify the contracting agency as a United States Government entity.

10 U.S.C. §2381, which requires certain measures for non-negotiated procurements which will identify the contracting agency as a United States Government entity (surety bonds, charges, etc.).

10 U.S.C. §2384, which requires supplies furnished to a military department to be uniquely marked, which will identify the contracting agency as a United States Government entity.

10 U.S.C. §2631, which restricts transportation of supplies to U.S. Flag Vessels. This may conflict with prevailing commercial practice.

"Federal property management" means the control and use of federal real and personal property. These activities are principally governed by Titles 40 and 10 of the United States Code. Restrictions that may be incompatible with commercial covers include:

40 U.S.C. §34, which limits the leasing of space in the District of Columbia.

40 U.S.C. §33a, which establishes restrictions on construction loans for office buildings by Government corporations.

40 U.S.C. §129, which establishes limits on a Government corporation's leasing of buildings in addition to the limitation on rental rates and prohibits the inclusion, in any lease, of any provision regarding the repair of real property.

10 U.S.C. §2662, which requires reporting of certain real estate transactions to Congress 30 days in advance of the transaction.

10 U.S.C. §2672, which restricts agency authority to acquire an interest in land to \$100,000 or less.

10 U.S.C. §2676, which limits authority to acquire land unless acquisition is expressly authorized by law.

"Federal employment" means restrictions, rights, duties, and entitlements flowing from Part III of Title 5 of the United States Code. The intent of this section is to exclude from the application of Title 5, U.S.C., employees of the commercial cover who are not federal employees occupying positions within the commercial cover. The restrictions, rights, duties, and entitlements that may be incompatible with prevailing commercial practice include:

5 U.S.C. §3101 et seq., which limits the authority to appoint employees.

5 U.S.C. §5101 et seq., which establishes classes of employees and prescribes levels of pay for those classes.

5 U.S.C. §4101 et seq., which establishes training programs.

5 U.S.C. §4301 et seq., which establishes a performance rating system for employees, including minimum due process.

5 U.S.C. §6101 et seq., which establishes a leave and attendance system.

5 U.S.C. §7101 et seq., which establishes a system for adverse actions, including removal.

5 U.S.C. §8101 et seq., which provides compensation for work injuries.

5 U.S.C. §8301 et seq. and 8401 et seq., which provide retirement benefits.

5 U.S.C. §8501 et seq., which provides unemployment compensation.

5 U.S.C. §8701 et seq., which provides life insurance and
5 U.S.C. §8901 et seq., which also provides life insurance.

"Government Corporations" means a corporation that is owned by the Federal Government. While commercial covers are not Government corporations in the classical sense, they nonetheless meet definitions set out in 31 U.S.C. §9101(1). Government corporations are principally governed by Title 31 of the United States Code. Requirements that pertain to Government corporations that may be incompatible with commercial covers include:

31 U.S.C. §9102, which requires that each corporation established or acquired by an agency be specifically authorized by Congress.

31 U.S.C. §9103, which requires an annual budget submission to Congress.

31 U.S.C. §9107, which requires Comptroller General's approval prior to the consolidation of a corporation's cash.

31 U.S.C. §9108, which limits the obligations that may be issued by a Government corporation.

It is intended that commercial covers utilize these exemptions only to the extent that it is necessary, and that they be conducted in a manner that is generally consistent with ordinary commercial practice. Adequate safeguards are provided in the legislation and the Department's own procedures will further ensure the proper application of the exemptions and the appropriate use of funds.

Subsection 393c authorizes the deposit and withdrawal of appropriated and generated funds in banks and other financial institutions.

Subsection 393d requires that all proceeds generated by a commercial cover that are no longer necessary to offset necessary and reasonable expenses of the commercial cover revert to the U.S. Treasury as miscellaneous receipts.

Subsection 393e requires that funds resulting from a final disposition of a commercial cover, after all obligations have been met, shall be deposited in the United States Treasury as miscellaneous receipts.

Proposed Subsection 394a grants to the Secretary of Defense or the Secretaries of the Military Departments, or their designees, the authority to acquire necessary services, personnel, fixtures, and realty in order to support a commercial cover.

Proposed Subsection 394b requires that acquisitions made pursuant to Subsection 394a utilize procedures that are consistent with prevailing commercial practice. The subsection further provides that such acquisitions shall be exempt from laws governing federal acquisitions, federal appropriations, federal property management, and federal employment where the application of such laws would risk the compromise of the commercial cover. It is not intended that the authorities contained in this section will relieve the the Department of Defense from any requirements of applicable laws. Any exemptions apply only to the operations of the commercial cover. For a discussion of these laws see the analysis above pertaining to proposed Subsection 393b.

Proposed Subsection 395a requires the Secretary of Defense to promulgate regulations to ensure oversight, operational effectiveness, and accountability of all intelligence support activities undertaken pursuant to this chapter.

Proposed Subsection 395b requires the Secretary of Defense, or the Secretaries of the Military Departments, to ensure that an annual review and audit is conducted of each intelligence support activity.

Proposed Subsection 395c makes it clear that all intelligence support activities undertaken pursuant to this chapter are to be protected from unauthorized disclosure as set forth in 50 U.S.C. §403(d)(3).

TITLE VI
NATIONAL SECURITY AGENCY
PERSONNEL AUTHORITIES IMPROVEMENTS

Section 601 amends Section 16 of the National Security Agency Act, enacted in the Intelligence Authorization Act for Fiscal Year 1987. That section authorizes the establishment of an undergraduate training program to facilitate recruitment of individuals for the National Security Agency (NSA), particularly minority high school students, needed to develop skills critical to the NSA mission. Section 801 adds a new subsection (subsection (b)) to allow the Secretary of Defense to offer advanced training in critical skills such as mathematics, engineering, computer science and foreign languages with the intent of attracting students in the top five percent of leading colleges and universities.

The success of the NSA mission depends upon the Agency's ability to recruit the most talented and available mathematicians, computer scientists, engineers, and linguists. The Agency's ability to recruit and retain these critically skilled individuals has been severely challenged and diminished in recent years because of the increase in the demand for these important talents in the private industrial community. This is due in part to special incentives that industry can offer to graduating college and university seniors, but which NSA is prohibited by law from offering to its recruits. Among those special incentives is sponsorship for advanced degrees. Section 601 would significantly aid the Agency in competing for the finest graduating talent available by permitting the Agency to match the offers of private firms to sponsor qualified individuals for advanced degrees.

Section 602 would amend section 912(a) of the Internal Revenue Code of 1954 to grant tax treatment of allowances currently provided to certain Department of Defense (DoD) personnel under section 9(b)(1) of the National Security Agency Act of 1959 and section 1605 of title 10, United States Code, comparable with that provided to Foreign Service employees for similar allowances.

The Intelligence Authorization Act of 1982 (Public Law 97-89) amended the National Security Agency Act of 1959 to allow the Director of the National Security Agency to provide allowances and benefits to certain civilian employees of DoD which were comparable to those provided to the Department of State's Foreign Service and to employees of the Central Intelligence Agency. During the implementation of this statute, it was discovered that comparability of the allowances could not be achieved unless the tax exemption provided for Foreign Service and CIA employees under section 912(1)(A) and (B) of the Internal Revenue Code was also available for civilians employed and assigned to the National Security Agency.

The Intelligence Authorization Act for Fiscal Year 1984 (Public Law 98-215) amended title 10, United States Code, to provide certain allowances and benefits to personnel assigned to Defense Attaché Offices and Defense Intelligence Agency (DIA) Liaison Offices overseas comparable to those provided by the Secretary of State to officers and employees of the Foreign Service under chapter 9 of title I of the Foreign Service Act of 1980 and the provisions of 5 U.S.C. §5924(4). Although section 1605 was designed to establish equivalence between DAO/DIALO civilians and Foreign Service personnel with respect to many allowances and benefits, the actual value of the allowances and benefits to DAO and DIALO personnel is less than the value of the benefits to Foreign Service personnel, since the benefits granted under the Foreign Service Act are tax-free by virtue of section 912 of the Internal Revenue Code while those granted under section 1605 are not exempt from taxation.

The current inequity in taxation has been compounded by subsection 1232(b) of the Tax Reform Act of 1986 (Public Law 99-514). This subsection provides that civilian employees of DoD stationed in Panama may exclude from gross income allowances which are comparable to allowances excludable under section 912(a) of the Internal Revenue Code by employees of the Department of State stationed in Panama. Thus, it appears that any Defense Intelligence Agency or National Security Agency personnel stationed in Panama will, in future taxable years, be able to exclude from their gross income Foreign Service-equivalent allowances and benefits granted to them.

As a result of the provisions discussed above, there is now a situation where the tax laws treat identical allowances and benefits differently for NSA and DIA civilian personnel stationed overseas, from that of Foreign Service personnel. Moreover, under the Tax Reform Act of 1986, the tax laws now treat identical allowances and benefits differently for NSA and DIA civilian personnel in Panama from all other NSA and DIA civilian personnel stationed overseas. The addition of the proposed paragraphs (E) and (F) to section 912(1) of the Internal Revenue Code of 1954 will provide equal tax treatment for identical allowances and benefits received by NSA, DIA and Foreign Service civilian personnel stationed around the world.

The Congress is mindful of this problem and has indicated a willingness to assist. A provision identical to the amendment sought here was included in S. 1243, the Fiscal Year 1988/89 Intelligence Authorization Act as reported by the Senate Select Committee on Intelligence. During floor action on July 23, 1987, however, SSCI Chairman Boren was compelled to move to strike the provision from S. 1243 on account of a jurisdictional dispute. He indicated, however, that the Congress would be very receptive to the provision in the future (Congressional Record, July 23, 1987, pp. S 10591-92). Section 602 is resubmitted to allow the Congress to proceed in the matter.

TITLE VII
DEFENSE INTELLIGENCE AGENCY
PERSONNEL AUTHORITIES IMPROVEMENTS

Section 701 would provide the Defense Intelligence Agency (DIA) with the authority to pay additional compensation to its civilian personnel who are proficient in a foreign language which can be applied in the intelligence process--collection, analysis, production and dissemination. Currently, members of the Armed Forces, the Department of State, the National Security Agency, and the Central Intelligence Agency each have a special pay program designed to motivate personnel to maintain and enhance foreign language proficiencies. The need for such proficiency in DIA is fundamental because of the increasing demands for high quality, all-source military intelligence. In addition, it is recognized that the acquisition, maintenance and enhancement of a foreign language skill requires extraordinary effort and time normally outside of regular duty hours. Therefore, to encourage proficiency in critical foreign language communication skills (reading, speaking, and listening) in DIA, Section 701 authorizes the payment of special pay not to exceed \$3,600 per annum to civilian employees who test at or above a utility established by the Secretary of Defense.

Section 702 gives the Director the discretionary authority to ensure that DIA civilian and military personnel serving overseas receive the same degree of support received by State Department personnel serving under the same conditions.

TITLE VIII
DOD INTELLIGENCE AUTHORITIES ENHANCEMENTS

Section 801 creates a new chapter 154 within title 10, United States Code, dealing with foreign materiel utilization.

Proposed Section 2590 authorizes the Secretary of Defense to enter into agreements with foreign governments to facilitate production and exchange of intelligence, and to accept or furnish intelligence or foreign materiel in furtherance of such agreements. It also authorizes the Secretary to accept foreign materiel from other sources. It is stipulated that foreign materiel transfers effected pursuant to section 2590 will be governed by the provisions of section 503 of the National Security Act of 1947 (codified as section 415 to title 50, United States Code). Section 503 requires that the Congress be apprised of certain transfers of materiel or services.

Proposed section 2591 clarifies authority to make funds available for foreign materiel acquisition and authorizes funds to be reprogrammed for such purposes whenever the Secretary finds it important to do so.

Section 802 adds a new section to chapter 101 of title 10, United States Code, authorizing the Secretary of Defense to provide training to foreign military personnel.

Proposed section 2011 specifies that such training is confined to basic intelligence collection, production and dissemination skills. Training cannot be provided unless the Secretary determines that the collection, production or dissemination of foreign intelligence or counterintelligence by the Department of Defense will be enhanced.

TITLE IX
EXPORT ADMINISTRATION ACT
NATIONAL INTELLIGENCE REVIEW

Section 901 amends section 5 of the Export Administration Act by adding a new subsection which would require the Secretary of Commerce, in consultation with directors of intelligence agencies, to compile a narrow list of items of intelligence interest, and to refer requests to export those items directly to the intelligence agencies for review. The section recognizes that technology transfer can and does impact on the national intelligence effort of the United States, and that this impact should continue to be factored into an assessment of export license applications for certain categories of dual-use technologies.

As proposed, the section provides for identification of a limited range of goods and technologies already on the Commodity Control List that are of concern to the Intelligence Community, and stipulates that applications for export licenses for these items are to be referred directly to appropriate intelligence agencies for review. This procedure will serve to further refine Intelligence Community export license review requirements and to speed up processing of such referrals. The section requires an annual review of identified goods and technology to ensure that the list is revised as needed. The section requires that the intelligence review be conducted in accordance with the same procedures, time limits and dispute resolution mechanisms as established for all other agencies involved in the licensing process.

TITLE X
ENHANCED FBI COUNTERINTELLIGENCE AUTHORITIES

Access to Consumer Reports

Section 1001 amends the Fair Credit Reporting Act to require consumer reporting agencies to provide information to the Federal Bureau of Investigation in certain foreign counterintelligence investigations. The Right to Financial Privacy Act (RFPA) was recently amended to provide the FBI mandatory access to financial records in certain foreign counterintelligence investigations. Because consumer agencies are not subject to the RFPA, however, this change is necessary to provide similar consumer credit information.

The change will provide a means by which the FBI can obtain consumer credit information, including current and former addresses and employers, when it is certified by the Director that the report relates to an agent of a foreign power, or is necessary in connection with an authorized foreign counterintelligence investigation. The provision additionally prohibits disclosure of the fact the request was made or information obtained.

Section 1002 provides a means for the Federal Bureau of Investigation to obtain information relating to current and former residence and employment of individuals believed to be acting on behalf of a foreign power. The information obtained under this provision will permit the FBI to locate an agent of a foreign power, obtain historical data on actions by such an agent, and, in certain cases, assist in determining the veracity of such an agent. This information is not readily available to the FBI from any single source and is often impossible to obtain through investigation without compromising sources of information or the confidentiality of an investigation.

TITLE XI
GENERAL PROVISIONS

Section 1101 authorizes the increase of appropriations authorized by the Act for salary, pay, retirement and other benefits for federal employees as necessary for increase in such benefits authorized by law.

INTELLIGENCE AUTHORIZATION ACT
FISCAL YEAR 1989

CHANGES IN EXISTING LAW

NOTE: Where applicable, changes in existing law are shown as follows: existing law in which no change is proposed is shown in roman; existing law proposed to be struck is enclosed in brackets; and new material is underscored.

TITLE I - INTELLIGENCE ACTIVITIES

Section 101: No substantive change.

Section 102: No substantive change.

Section 103: No substantive change from the Fiscal Year 1988 Act

TITLE II - INTELLIGENCE COMMUNITY STAFF

Section 201: No substantive change.

Section 202: No substantive change.

Section 203: No substantive change.

TITLE III -
CENTRAL INTELLIGENCE AGENCY
RETIREMENT AND DISABILITY SYSTEM

Section 301: No substantive change.

TITLE IV - ADMINISTRATIVE PROVISIONS

Section 401: No change in existing law.

Section 402: Amends Section 301 of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees, as amended, as follows:

* * * * *

(c) (1) The provisions of chapter 84 of title 5, United States Code shall not apply with respect to---

(A) any individual who separates, or who has separated, from Federal Government service after having been an officer or employee of the Agency subject to title II of this Act; and

(B) any officer or employee of the Agency having at least five years of civilian service which was performed before January 1, 1987, and is creditable under title II of this Act (determined without regard to any deposit or redeposit requirement under subchapter III of chapter 83 of title 5, United States Code, or under title II of this Act), or any requirement that the individual becomes subject to such subchapter or to title II of this Act after performing the service involved;

(2) Paragraph (1) shall not apply with respect to an individual who has elected under regulations prescribed under section 307 of this Act to become subject to chapter 84 of title 5, United States Code.

(3) An individual described in paragraph (1) shall be deemed to be an individual excluded under section 8402(b)(2) of title 5, United States Code.

(d) Notwithstanding the provisions of section 301(c) of the Federal Employees' Retirement System Act of 1986 and any prior elections made pursuant to that section, an employee who has been designated as a participant in the Central Intelligence Agency Retirement System, pursuant to section 203 of this Act, may elect to become subject to Chapter 84 of title 5, United States Code. An election under this paragraph:

(1) shall not be effective unless it is made during the six-month period beginning on the date on which the employee is so designated;

(2) shall take effect beginning with the first pay period beginning after the date of election; and,

(3) shall be irrevocable."

[(d)] (e) The application of the provisions of chapter 84 of title 5, United States Code, to officers and employees referred to in subsection (a) shall be subject to the exceptions and special rules provided in this title. Any provision of such chapter which is inconsistent with a special rule provided in this title shall not apply to such officers and employees.

TITLE V - SUPPORT FOR DEFENSE INTELLIGENCE
COLLECTION ACTIVITIES

Section 501: Amends Subtitle (a) of Title 10, United States Code, by adding the following new chapter after Chapter 18:

CHAPTER 19 - SUPPORT FOR INTELLIGENCE

Sec.

391. Purpose of this chapter.

392. Definition.

393. Authority to conduct commercial cover.

394. Authority to acquire logistic support, supplies, and services.

395. Oversight.

396. General Provisions.

Sec. 391. Purpose of this chapter.

The purpose of this chapter is to provide clear authority for the Secretary of Defense or the Secretaries of the Military Departments to conduct support activities necessary for authorized and appropriately coordinated intelligence collection activities of the Department of Defense.

Sec. 392. Definition.

a. "Intelligence collection activities" means the collection of foreign intelligence or counterintelligence information by intelligence components of the Department of Defense.

b. "Intelligence support activities" means those activities described in Sections 393 and 394, below.

c. "Commercial cover" means a business entity that is established solely to conceal the role of an intelligence component of the Department of Defense as it performs intelligence collection activities.

Sec. 393. Authority to conduct commercial cover.

a. The Secretary of Defense or the Secretaries of the Military Departments, after consultation with the Director of Central Intelligence and the Director of the Federal Bureau of Investigation as appropriate,

may establish and conduct commercial entities such as corporations, partnerships, sole proprietaries, and other business entities as commercial covers to support intelligence collection activities of the Department of Defense, as defined herein. Such commercial entities may be established only upon written certification by the Secretary concerned that commercial cover is necessary to the conduct of authorized intelligence collection activities.

b. The establishment and operation of commercial entities pursuant to this section shall be in accordance with prevailing commercial practices so long as such practices are not inconsistent with the purposes of commercial cover. To this end, laws applicable to federal appropriations, federal property management, federal acquisitions, federal employment and government corporations shall not apply to the establishment and operation of commercial covers upon the written certification by the Secretary concerned or his designee for the purpose that the application of such laws would risk the compromise of commercial cover.

c. The Secretary of Defense or the Secretaries of the Military Departments, or their designees, are authorized to deposit and withdraw funds appropriated for the Department of Defense used to conduct commercial cover and funds generated by the business entities authorized by this section in banks or other financial institutions.

d. Funds generated by such business entities may be used to offset necessary and reasonable expenses incurred by the commercial cover. As soon as practicable, funds generated by a commercial cover that are no longer necessary for the conduct of that commercial cover shall be deposited in the Treasury of the United States as miscellaneous receipts.

e. Upon the liquidation, dissolution, sale, or other final disposition of a commercial cover established and conducted under the provisions of this section, the funds, after obligations are met, shall be deposited in the Treasury of the United States as miscellaneous receipts.

Sec. 394. Authority to acquire logistic support, supplies, and services.

a. The Secretary of Defense or the Secretaries of the Military Departments, or their designees, may acquire any goods, services, property, buildings, facilities, space, insurance, licenses and any equipment necessary in order to establish or maintain a commercial cover.

b. Acquisitions made under the provisions of this section are to be made utilizing procedures consistent with prevailing commercial practice so long as such practices are not inconsistent with the purposes of the commercial cover. To this end, laws applicable to federal acquisitions, federal appropriations, federal property management, and federal employment shall not apply where the application of such laws would risk compromise of the commercial cover.

Sec. 395. General Provisions.

a. The Secretary of Defense shall promulgate regulations to ensure oversight, operational effectiveness, and accountability of the intelligence support activities conducted pursuant to sections 393 and 394 of this title.

b. The Secretary of Defense, or Secretaries of the Military Departments shall ensure that elements of the Department of Defense that undertake intelligence support activities pursuant to this chapter conduct an annual review and audit of such support activities.

c. Intelligence support activities authorized under this chapter shall be protected pursuant to 50 U.S.C. 403(d)(3).

d. "The table of chapters at the beginning of Subtitle A of such title and at the beginning of Part I of such subtitle are each amended by inserting after the item relating to Chapter 18 the following new item:

19. Support for Intelligence.....391.

TITLE VI
NATIONAL SECURITY AGENCY
PERSONNEL AUTHORITIES IMPROVEMENTS

Section 601: Amends Section 16(a) of the National Security Agency Act of 1959 to read as follows:

"Sec. 16 (a) The purposes of this section [is] are:
(1) to establish an undergraduate training program, which may lead to the baccalaureate degree, to facilitate the recruitment of individuals, particularly minority high school students, with a demonstrated capability to develop skills critical to the mission of the National Security Agency, including mathematics, computer science, engineering, and foreign languages[.]; and (2) to establish a graduate training program which may lead to a graduate degree to facilitate the recruitment of new employees with a demonstrated capability to develop skills critical to this mission of NSA."

(b) The Secretary of Defense is authorized, in his discretion, to assign civilian employees of the National Security Agency as students at accredited professional, technical, and other institutions of higher learning for training at the undergraduate or graduate levels in skills critical to effective performance of the mission of the Agency.

* * * * *

(e)(2) Agency efforts to recruit individuals at educational institutions for participation in the undergraduate or graduate training programs established by this section shall be made openly and according to the common practices of universities and employers recruiting at such institutions".

Section 602: Amends Section 912(1) of chapter 1 of title 26, United States Code, to read as follows:

The following items shall not be included in gross income, and shall be exempt from taxation under this subtitle:

(1) Foreign areas allowances: in the case of civilian officers and employees of the Government of the United States, amounts received as allowances, or otherwise (but not amounts received as post differentials) under__

(A) chapter 9 of title I of the Foreign Service Act of 1980,

(B) section 4 of the Central Intelligence Agency Act of 1949, as amended (50 U.S.C., 403e),

(C) title II of the Overseas Differentials and Allowances Act, [or]

(D) subsection (e) or (f) of the first section of the Administrative Expenses Act of 1946, as amended, or section 22 of such Act, [.]

"(E) subsection (b) of section 9 of the National Security Agency Act of 1959, as amended (50 U.S.C. §402 note), whenever the allowance would be excluded from gross income under paragraphs (1)(A) or (1)(B) of this section, or

"(F) subsection 1605(a) of title 10, United States Code, whenever the allowance would be excluded from gross income under paragraph 1(A) of this section."

TITLE VII - DEFENSE INTELLIGENCE AGENCY PERSONNEL AUTHORITIES IMPROVEMENTS

Section 701: Amends Chapter 33 of title 10, United States Code, to add at the end thereof the following new section:

"1606. Special Pay for Foreign Language Proficiency

"(a) In addition to any compensation authorized under section 1604(b) of this title, the Secretary of Defense may further compensate civilian officers and employees of the Defense Intelligence Agency: (1) who have been certified to be proficient in a foreign language identified by the Secretary of Defense as being a language where personnel proficiency is necessary for national defense considerations; and (2) who serve in positions where proficiency facilitates performance of officially assigned duties, or otherwise are proficient in a foreign language for which the Defense Intelligence Agency has a critical need."

"(b) The annual rate for special pay under subsection (a) shall be determined by the Secretary of Defense but may not exceed \$3,600."

Section 702: (a) Amends Section 1605 of title 10, United States Code as follows:

"(a) The Secretary of Defense may provide to civilian personnel of the Department of Defense who are United States nationals, who are assigned to Defense Attache Offices and Defense Intelligence Agency Liaison Offices outside the United States, and who are designated by the Secretary of Defense for purposes of this subsection, allowances and benefits comparable to those provided by the Secretary of State to officers and employees of the Foreign Service. [under paragraphs (2), (3), (4), (5), (6), (7), (8) and (13) of section 901 and sections 705 and 903 of the Foreign Service Act of 1980 (22 U.S.C. 4081 (2), (3), (4), (5), (6), (7), (8) and (13), 4025, 4083) and under section 5924(4) of title 5. The Secretary may also provide to any such civilian personnel who are subject to chapter 84 of title 5, special retirement accrual benefits in the same manner provided for certain officers and employees of the Central Intelligence Agency in section 303 of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees (50 U.S.C. 403 note)].

(b): Amends Section 431 of title 37, United States Code, as follows:

"(a) The Secretary of Defense may provide to members of the armed forces who are assigned to Defense Attache Offices and Defense Intelligence Agency Liaison Offices outside the United States and who are designated by the Secretary of Defense for the purposes of this subsection allowances and benefits comparable to those provided by the Secretary of State to officers and employees of the Foreign Service. [under paragraphs (2), (3) (4), (6), (7), (8), and (13) of section 901 and sections 705 and 903 of the Foreign Service Act of 1980 (22 U.S.C. 4081 (2), (3), (4), (6) (7), (8) and (13), 4025, 4083) and under section 5924(4) of title 5"].

TITLE VIII DOD INTELLIGENCE AUTHORITIES ENHANCEMENTS

Section 801: Amends Title 10, United States Code, by adding a new chapter, chapter 154, thereto to read as follows:

"Chapter 154 - Foreign Materiel Utilization

"2590. Notwithstanding any other provision of law, the Secretary of Defense may acquire or accept foreign materiel important to the military or intelligence interests of the United States and may exchange, accept or furnish information or materiel

pursuant to an agreement with a foreign country or international organization for the production or exchange of intelligence. Transfers of foreign materiel under this chapter are subject to the provisions of section 503 of the National Security Act of 1947."

"2591. Notwithstanding any other provision of law, sums appropriated to the Department of Defense shall be available for acquisition of foreign materiel when such acquisition is determined by the Secretary to be important to the military or intelligence interests of the United States."

Section 802: Amends Chapter 101 of title 10, United States Code, by adding at the end thereof the following new section:

"2011. Training of Certain Foreign Personnel.

"Notwithstanding any other provision of law, the Secretary of Defense may provide training in intelligence collection, analysis and dissemination to personnel of the armed forces of any other country where the Secretary determines that such training will further the collection, production or dissemination of foreign intelligence or counterintelligence by the Department of Defense."

TITLE IX
EXPORT ADMINISTRATION ACT:
NATIONAL INTELLIGENCE REVIEW

Section 901: Amends Section 5 of the Export Administration Act of 1979 (50 U.S.C. App. 2404) by adding at the end thereof the following new subsection:

"(t) National Intelligence Review: The Secretary, in consultation with the Directors of intelligence agencies with export control responsibilities, shall identify annually those Control List goods and technologies which, if exported, would prove detrimental to the national intelligence effort of the United States, and shall submit requests for exports of such goods and technologies directly to the agencies for review. Intelligence agency Directors shall review submissions made to them pursuant to this paragraph, and shall advise the Secretary directly of their recommendation using the same procedures and dispute resolution mechanism as those established for the Secretary of Defense in Section 19(g)(2)."

TITLE X
ENHANCED FBI COUNTERINTELLIGENCE AUTHORITIES

Section 1001 (a): Amends Section 1681b of title 15, United States Code, entitled "Permissible Purposes of Consumer Reports", by adding the following new paragraph at the end thereof:

A consumer reporting agency may furnish a consumer report under the following circumstances and no other:

* * * * *

"4 To the Federal Bureau of Investigation when presented with a request for a consumer report made pursuant to this subsection by the Federal Bureau of Investigation providing that the Director of the Federal Bureau of Investigation, or his designee, certifies in writing to the consumer reporting agency that such records are sought for foreign counterintelligence purposes and that there are specific and articulable facts giving reason to believe the person to whom the requested consumer report relates is an agent of a foreign power as defined in Section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. §1801). No consumer reporting agency, or officer, employee, or agent of such institution shall disclose to any person that the Federal Bureau of Investigation has sought or obtained access to a consumer report under this paragraph."

(b): Amends Section 1681f of Title 15, United States Code, entitled, "Disclosures to Government Agencies," to read as follows:

(1) Notwithstanding the provisions of section 1681b of this title, a consumer reporting agency may furnish identifying information respecting any consumer limited to his name, address, former addresses, places of employment, or former places of employment, to a government agency.

(2) Notwithstanding the provision of Section 1681 (b) of this Title, a consumer reporting agency shall furnish identifying information respecting any consumer, limited to his/her name, address, former address, place of employment, or former place of employment, to a representative of the Federal Bureau of Investigation when presented with a written request signed by the Director of the Federal Bureau of Investigation, or his designee, stating that the information is sought in connection with an authorized foreign counterintelligence investigation.

(3) No consumer reporting agency, or officer, employee, or agent of such institution, shall disclose to any person that the Federal Bureau of Investigation has sought or obtained a consumer report under this section.

Section 1002: Amends Section 1306 of Title 42, United States Code, entitled "Disclosure of Information in Possession of Department of Health and Human Services or Department of Labor," to be amended by adding the following new paragraph at the end thereof:

"(f) FBI REQUESTS FOR FOREIGN COUNTERINTELLIGENCE PURPOSES

Notwithstanding Section 1306(a), the Secretary of Health and Human Services, or the Secretary of Labor, as the case may be, shall disclose information in the Secretary's possession relating to the current and prior residences of a named person, when presented with a certification signed by the Director of the Federal Bureau of Investigation, or the Director's designee, stating that:

(1) The information is sought in connection with an authorized foreign counterintelligence investigation; and,

(2) There are specific and articulable facts giving reason to believe the person is an agent of a foreign power as defined in Section 101 of the Foreign Intelligence Surveillance Act of 1978 ((50 U.S.C. §1801))."

TITLE XI
GENERAL PROVISIONS

Section 1101: No substantive change.

INTELLIGENCE AUTHORIZATION ACT,
FISCAL YEAR 1989

COST ANALYSIS

TITLE I - INTELLIGENCE ACTIVITIES

SEC. 101. Fiscal Year 1989 authorizations are contained in the Classified Schedule of Authorizations.

SEC. 102. Cost analysis not applicable.

SEC. 103. Cost contingent upon exercise of permissive authority.

TITLE II - INTELLIGENCE COMMUNITY STAFF

SEC. 201. The Fiscal Year 1989 authorization is \$.

SEC. 202. Cost analysis not applicable.

SEC. 203. Cost analysis not applicable.

TITLE III - CENTRAL INTELLIGENCE AGENCY
RETIREMENT AND DISABILITY SYSTEM

SEC. 301. The Fiscal Year 1989 authorization is \$.

TITLE IV
CENTRAL INTELLIGENCE AGENCY
ADMINISTRATIVE PROVISIONS

SEC. 401. Cost contingent upon exercise of the authority granted.

SEC. 402. Cost contingent upon exercise of the authority granted.

TITLE V - SUPPORT FOR DEFENSE INTELLIGENCE
COLLECTION ACTIVITIES

SEC. 501. Enactment of this legislation should not result in any additional cost to the Department of Defense or the Federal Government.

TITLE VI
NATIONAL SECURITY AGENCY
PERSONNEL AUTHORITIES IMPROVEMENTS

SEC. 601. Enactment of this provision would result in some additional cost to the National Security Agency, although it is anticipated that a portion of current training and recruitment funds would be set aside to fund this program.

SEC. 602. The enactment of this section would result in the loss to the government of income tax revenues otherwise collectible on the exempted sums.

TITLE VII
DEFENSE INTELLIGENCE AGENCY
PERSONNEL AUTHORITIES IMPROVEMENTS

SEC. 701. Cost contingent on necessity to use prescribed authority.

SEC. 702. Cost contingent on necessity to use prescribed authority.

TITLE VIII
DOD INTELLIGENCE AUTHORITIES ENHANCEMENTS

SEC. 801. Cost contingent on necessity to use prescribed authority.

SEC. 802. Cost contingent on necessity to use prescribed authority.

TITLE IX
EXPORT ADMINISTRATION ACT
NATIONAL INTELLIGENCE REVIEW

SEC. 901. The enactment of this section will result in little or no additional cost to the government.

TITLE X
ENHANCED FBI COUNTERINTELLIGENCE AUTHORITIES

Access to Consumer Reports

SEC. 1001 This change will allow the FBI to obtain accurate reliable information, often unobtainable from any other source. There are no known costs associated with the change. In many cases the provision will save a significant expenditure of man hours necessary to develop similar information from other sources. In other cases, without this provision, investigations will be terminated because insufficient information is available to further identify the subject and/or continue the investigation.

SEC. 1002. This change will allow the Federal Bureau of Investigation to obtain accurate reliable information, often unobtainable from any other source. There are no known costs associated with the change. In many cases the provision will save a significant expenditure of man hours necessary to develop similar information from other sources. In other cases, without this provision, investigations will be terminated because insufficient information is available to further identify the subject and/or continue the investigation.

TITLE XI
GENERAL PROVISIONS

SEC. 1101. Cost analysis not applicable.